

(19,906.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 404.

ANNA VALENTINA, APPELLANT,

vs.

JAMES W. MERCER, SHERIFF OF BERGEN COUNTY,
NEW JERSEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEW JERSEY.

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1 To the Circuit Court of the United States for the District of New Jersey:

The petition of Anna Valentina, of full age, respectfully shows that she is illegally imprisoned and restrained of her liberty by the Hon. James W. Mercer, Sheriff of the County of Bergen in the State of New Jersey, and is confined by him in the jail of said County of Hackensack under a sentence of death by the Bergen County Court of Oyer and Terminer to be executed on Friday, May Twelfth, 1905.

And your petitioner shows that the cause and pretence of such confinement according to her knowledge and belief, is an order of the Bergen County Court of Oyer and Terminer made on the fourth day of April, 1905, of which a true copy is annexed hereto and made a part of this petition.

And your petitioner further shows and charges the truth to be that said order is illegal and contrary to the fourteenth amendment of the Constitution of the United States in this: that it has been made by the said Bergen County Court of Oyer and Terminer without due process of law, and that it deprives the said Anna Valentina of her liberty and life without due process of law, and denies to her the equal protection of the laws.

And your petitioner shows that the said Anna Valentina was indicted, a copy of which indictment is hereto annexed, in the April Term, 1904, of the Bergen County Court of Oyer and Terminer by the Grand Jury of Bergen County for the murder of one Rosa Salza

2 on March tenth, 1904, at the Borough of Lodi in said County, and that subsequently she duly pleaded not guilty, as by reference to the record, a copy of which is hereto annexed, will appear, and that such proceedings were had in said Court of Oyer and Terminer on said indictment as resulted in the conviction of murder in the first degree of the said Anna Valentina by a jury of said Court, and the sentence of the said Anna Valentina by said Court that she be on May 19, 1904, hung by the neck until dead.

And your petitioner further shows that she is informed and believes that the said proceedings in the Bergen County Court of Oyer and Terminer aforesaid, which resulted as aforesaid, in the conviction of said Anna Valentina of murder in the first degree and her sentence of death as aforesaid, were without authority of law and null and void; that the question of her guilt or innocence of murder was not entertained by the Court or submitted to the Jury as the law of the State of New Jersey expressly requires in all cases, where parties are indicted for murder, but on the contrary, evidence was taken in said court in said proceedings merely to determine the degree of her guilt; that her Counsel assigned by the Court to represent her in said proceedings has since her conviction so stated in a petition, a copy of which is hereto annexed, to the Court of Pardons of the State of New Jersey, to wit, that the said Anna Valentina pleaded guilty, but under the direction of the Court a plea of not guilty was entered so that evidence might be taken for the purpose of determining the degree of guilt, and your petitioner shows and charges the truth to

3 be that the evidence taken on said proceedings was limited to that purpose, and the alleged trial conducted with that sole object in view, your petitioner being assumed to be guilty of the crime of murder, and your petitioner charges that said proceeding was wholly unwarranted by the law of New Jersey; that Court and her Counsel evidently proceeded under the impressions that section 68 of the act for the punishment of crimes, approved March 27, 1874, which provided that if a person indicted for murder should be convicted by confession in open court the Court should proceed by examining witnesses to determine the degree of the crime, but your petitioner shows that said law was repealed in 1893 and the present law adopted, which provides, "if upon arraignment such plea of guilty shall be offered, it shall be disregarded and a plea of not guilty entered, and a jury impanelled shall try the case in manner aforesaid."

And your petitioner further shows that by the proceedings adopted the said Anna Valentina was deprived of all benefit of the presumption of innocence and of reasonable doubt to which she was entitled by law, and that the questions of self defence and manslaughter, fairly raised by her testimony, were excluded from the consideration of the jury, and the question submitted to them was limited by the Court simply as to whether she was guilty of murder in the first degree or not, and the benefit of reasonable doubt was confined to that point.

And your petitioner further shows that after her said conviction a Writ of Error was sued out of the Court of Errors and Appeals, the highest tribunal of the State of New Jersey, by James M. Trimble, the attorney of said Anna Valentina in said matter, for the purpose of reviewing the record of said conviction and of obtaining a new trial for her on said indictment, but that said Court dismissed said writ and refused a new trial, and your petitioner charges that said Court of Errors and Appeals ignored the foregoing point, although the same was raised as herein stated.

4 And your petitioner further shows and charges the truth to be that the said Anna Valentina never did plead or offer to plead guilty of murder; that she does not understand the English language, nor the distinctions in crime; that all her statements to the court were made through an interpreter; that the court assigned her a Counsel with whom she could not communicate, except through an interpreter; that her admission that she had killed Rosa Salza was misinterpreted and distorted into an offer of a plea of guilty of murder; that her counsel stated to the Jury in opening the case for the defence that the said Anna Valentina when arraigned in open court made confession of the commission of this crime, and that the verdict of the jury would be simply to determine what the degree of her guilt should be; that the verdict would be either that she was guilty of the taking of the life of this woman with malice aforethought premeditated, which would mean a verdict of murder in the first degree, or their verdict would be murder in the second degree.

And your petitioner shows and charges that the said statement had no foundation in the evidence, or in the record, and was a misstate-

ment of fact, and this petitioner charges that it became and was the duty of the court to have contradicted said statement and to have told the jury that there was no evidence of any such fact before them or to be considered by them, but on the contrary, your petitioner shows that the court adopted this misstatement of counsel and commended and submitted it to the consideration of the jury.

And your petitioner further shows that the court of Errors and Appeals in passing upon this point raised on said writ held that it did not become the duty of the Court at such trial to contradict such misstatement of fact on the part of the attorney of a defendant charged with murder, unless the defendant requested so to do, but your petitioner shows that as it appears in said record that said defendant did not understand the English language and was not aware of what her Counsel had told the Jury, and could not make such a request of the judge, it became the duty of the trial court to have caused the interpreter to translate what Counsel had said, but that said court failed to do so.

And your petitioner further shows that after the dismissal of said Writ of Error, sued out of the Court of Errors and Appeals of the State of New Jersey as aforesaid to wit, on the fourth day of April, 1905, the said Anna Valentina was again sentenced to be hung by the Bergen County Court of Oyer and Terminer at Hackensack on the twelfth day of May, nineteen hundred and five, and that she is now awaiting the execution of said sentence in said jail by the order hereinbefore mentioned.

6 And your petitioner further shows that she is a subject of the King of Italy; that under the treaty between said Country and the United States of America she is entitled to the same treatment as a citizen of the United States; that the Fourteenth Amendment of the Constitution of the United States provides: "that no state shall deprive any person of life, liberty or property without due process of law, or deny any person within its jurisdiction the equal protection of the laws," and your petitioner shows and charges that the said treaty has been violated in the case of Anna Valentina.

And your petitioner further shows that said indictment is fatally defective and void under the constitution of New Jersey and the Constitution of the United States, because it does not set out the crime of which the said Anna Valentina was charged, or of any offence known to the criminal law of New Jersey and is, therefore, not due process of law under the Fourteenth Amendment of the Constitution of the United States.

And your petitioner further shows that the evidence in the case does not show, beyond a reasonable doubt, that the said Anna Valentina was guilty of the crime of wilful, deliberate and premeditated murder or of any crime, and that the jury were prevented from considering freely and impartially, and giving full effect to the testimony of the said Anna Valentina, because of the action of the Court in directing them that they must find her guilty of murder in the second degree by reason of the admitted facts in the case, and that they were only to consider whether she was guilty of

murder in the first degree or not; that said proceedings were not fair to said Anna Valentina nor regular.

Wherefore, to be relieved of said illegal and unlawful sentence, imprisonment, detention and restraint, your petitioner prays that a writ of *habeas corpus*, directed to the said James W. Mercer, Sheriff of the County of Bergen as aforesaid, may issue in behalf of the said Anna Valentina so that she may be forthwith brought into this Court to do and submit to what the law may require, and that the said Anna Valentina may be discharged out of custody, and that a writ of certiorari may also be issued in aid of said writ of *Habeas Corpus* to review the record of her conviction and that she have leave to take testimony to establish the facts alleged in said petition.

And your petitioner will ever pray, &c.

her
ANNA x VALENTINA.
mark.

Witnesses:

NATHAN KUSSY.
LOUIS BUONOCORE.

STATE OF NEW JERSEY,
County of Bergen, United States of America, ss:

Anna Valentina, being duly sworn according to law, deposes and says: that she is the petitioner names in the foregoing petition subscribed by her; that said petition has been read and translated to her and that she knows the contents thereof, and that the statements therein contained are true to the best of her knowledge and belief.

her
ANNA x VALENTINA.
mark.

Sworn to and subscribed before me this 8th day of May, 1905, at Hackensack, New Jersey.

NATHAN KUSSY,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, *County of Bergen, ss:*

Louis Buonocore, of full age, being duly sworn, deposes and says that he is the official Italian interpreter for the courts of Bergen County, and that he reads and writes and speaks fluently the English and Italian languages; that he has correctly translated the within petition to Anna Valentina and explained to her the contents thereof; that thereupon she affixed her mark to the same in the presence of deponent and of Nathan Kussy her attorney.

LOUIS BUONOCORE.

Sworn to and subscribed before me this 8th day of May, 1905, at Hackensack, New Jersey.

NATHAN KUSSY,
Master in Chancery.

9 Bergen Oyer and Terminer, April 4, 1905.

THE STATE
vs.
ANNA VALENTINA.

Indictment for Murder.

Sentence Moved by the Prosecutor.

The Court said as follows:

"Anna Valentina, you were, on the thirteenth day of April, in the year 1904, in this court, found guilty by a jury of the County, of the crime of murder, and that jury by their verdict designated the crime to be murder of the first degree, and that you wilfully, feloniously and of your malice aforethought, did wilfully, deliberately and premeditatedly, kill and murder one Rosina Solza. The Court did thereupon, on the 16th day of April, 1904, order and adjudge that for said crime you suffer death on the 19th day of May, 1904, in the manner directed by law. That judgment you caused to be removed by writ of error into the Court of Errors and Appeals, and pending the writ of error, the execution of the sentence has been stayed. The Court of Errors and Appeals has affirmed your conviction, and the record thereof has been remitted to this Court to the end that execution may proceed thereon.

This Court, therefore, does now designate Friday, the 12th day of May, in the year 1905, between the hours of eight o'clock in the forenoon and two o'clock in the afternoon, as the time, and either
10 in the jail of this County where you shall be confined, or within an enclosed yard of such jail, if there be one, or within an enclosure erected for the purpose adjoining such jail, at the discretion of the Sheriff, as the place for the execution of such sentence.

STATE OF NEW JERSEY, *County of Bergen, ss:*

I, John R. Ramsey, Clerk of the County of Bergen and also Clerk of the Court of Oyer and Terminer in and for said County, do hereby certify that the foregoing is a true copy of the sentence of death passed against Anna Valentina as the same appears in the minutes of said Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County, this eighth day of May, A. D. 1905.

JOHN R. RAMSEY, *Clerk.*

Bergen Oyer and Terminer, April Term, A. D. 1904.

BERGEN COUNTY, *To wit:*

The Grand Inquest of the State of New Jersey, in and for the County of Bergen, upon their respective oaths present, that Anna

Valentina, late of the Borough of Lodi in the said County of Bergen,
 on the tenth day of March, in the year of our Lord one thou-
 11 sand nine hundred and four, at the Borough aforesaid, in
 the county aforesaid, and within the jurisdiction of this
 Court, wilfully, deliberately, premeditatedly, feloniously, and of
 her malice aforethought, did kill and murder one Rosina Salza,
 contrary to the form of the statute in such case made and provided,
 against the peace of the State, the government and dignity of the
 same.

ERNEST KOESTER,
Prosecutor.

Witness:-

LOUISA NORGIA.
 STEPHEN NEBEESNI.

Bergen Oyer and Terminer, April Term, A. D. 1904.

The State *vs.* Anna Valentina. Murder. Ernest Koester, Prose-
 cutor. A True Bill. E. J. Turner, Foreman. Filed April 5th,
 1904. Arraigned April 5th, 1904. Plea: "Not guilty." Amt. of
 Recognizance, \$. Trial Day April 11th, 1904. Post-
 poned to— —

THE STATE
vs.
 ANNA VALENTINA.

Indictment for Murder.

The defendant being charged on this Indictment and pleaded
 "not guilty," whereupon the defendant was remanded for trial
 April 11 inst.

Court assigned Milton Demarest, Atty., to defend the defendant.

Bergen Oyer and Terminer, April 16, 1904.

THE STATE
vs.
 ANNA VALENTINA.

Indictment for Murder.

12 The defendant having been convicted of Murder in the
 first degree upon this Indictment, whereupon, on motion of
 Ernest Koester, Esquire, Prosecutor for the State, for judgment,
 the Court pronounced sentence as follows, viz: "The sentence of the
 law is, and the Court doth now order and adjudge, that for the crime
 of murder in the first degree, in respect to the killing of Rosina
 Salza, of which you have been convicted, you be taken by the Sheriff
 to the place of confinement whence you came, and there be kept in
 safe custody until Thursday, the nineteenth day of May next, and

that on that day, between the hours of eight o'clock in the morning and two o'clock in the afternoon, either in the prison where you shall be confined, or within the enclosed yard of such prison, if there be one, or within an enclosure erected for the purpose, adjoining such prison, at the discretion of the Sheriff, you be hanged by the neck until dead; and may God have mercy on your soul."

Sentenced April 16, 1904.

STATE OF NEW JERSEY, *County of Bergen*, ss:

I, John R. Ramsey, Clerk of the County of Bergen and also Clerk of the Court of Oyer and Terminer in and for said County, do hereby certify that the foregoing are true copies of the Indictment against Anna Valentina and of the minutes of said Court, as the same remain on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court and County, this sixteenth day of June,

13 A. D. one thousand nine hundred and four.

JOHN R. RAMSEY, C.

Court of Pardons of New Jersey.

In the Matter of the Application of ANNA VALENTINA for Commutation of Sentence of Death to Life Imprisonment. Indictment for Murder.

On Application for Commutation of Sentence.

From Bergen Oyer and Terminer.

Ernest Koester, Prosecutor of the Pleas.
Milton Demarest, Counsel for Defendant.

To the Honorable Court of Pardons of the State of New Jersey:

The petition of Anna Valentina, formerly of Lodi, in the County of Bergen, and State of New Jersey respectfully sheweth:

That your petitioner is in the forty-fourth year of her age;

That at the April term of the Bergen Oyer and Terminer, to wit, on the Fourteenth day of April, Nineteen hundred and four, she was tried before said Court, and a jury of twelve men empanelled for that purpose, upon an indictment found against her for the killing of Rosa Salza;

14 That upon the trial of said indictment, she was convicted of murder in the first degree, and on Saturday then Sixteenth day of April, Nineteen hundred and four, sentenced to be executed on the Nineteenth day of May, in the year aforesaid.

Your petitioner further shows that when arraigned before the Court to plead to the indictment found against her, she pleaded guilty, but, under the direction of the Court, a plea of not guilty was entered so that evidence might be taken for the purpose of determining the degree of guilt:

That the crime for which your petitioner was tried, convicted, and sentenced, was committed by her under provocation which, while not sufficient to excuse her from the penalty of the law, she believes should be sufficient to operate in mitigation of the sentence of the Court;

And she further believes that had the jury in said case given her the full benefit of the reasonable doubt to which she, as defendant was entitled the verdict rendered would not have been murder in the first degree.

Your petitioner therefore prays that this Honorable Court will intervene, and after due and careful consideration of this application commute the sentence of death to life imprisonment.

Respectfully submitted, this Eighteenth day of April, Nineteen hundred and four.

(Signed)

MILTON DEMAREST,
Of Counsel with Petitioner.

Endorsed: United States Court, District of New Jersey. Anna Valentina vs. The State of New Jersey—On *Habeas Corpus*. Petition James M. Trimble, Att'y of Anna Valentina, #828
15 Broad Street, Newark, N. J.

The within petition is hereby denied and an appeal allowed to the Petitioner, Dated May 9, 1905.

W. M. LANNING, *Judge.*

Filed May 9, 1905.

H. D. OLIPHANT, *Clerk.*

TREATY
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE KINGDOM OF ITALY.

COMMERCE AND NAVIGATION.

SIGNED FEBRUARY 26, 1871; RATIFIED APRIL 29, 1871; RATIFICATIONS
EXCHANGED NOVEMBER 18, 1871; PROCLAIMED NOVEMBER 23, 1871.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a treaty of commerce and navigation between the United States of America and His Majesty the King of Italy was concluded and signed by their respective Plenipotentiaries, at the city of Florence, on the twenty-sixth day of February, one thousand eight hundred and seventy-one, which treaty, being in the English and Italian languages, is word for word as follows:

Treaty of Commerce and Navigation between the United States and the Kingdom of Italy.

Trattato di Commercio e di Navigazione tra il Regno d'Italia e gli Stati Uniti.

The United States of America and His Majesty the King of Italy, desiring to extend and facilitate the relations of commerce and navigation between the two countries, have determined to conclude a treaty for that purpose, and have named as their respective Plenipotentiaries: The United States of America, George Perkins Marsh, their Envoy Extraordinary and Minister Plenipotentiary near His Majesty the King of Italy; and His Majesty the King of Italy, the Noble Emilio Visconti Venosta, Grand

Sua Maestà il Re d'Italia e gli Stati Uniti d'America, desiderando d'estendere e facilitare le relazioni di commercio e di navigazione fra i due paesi, hanno determinato di conchiudere a questo scopo un trattato, ed hanno nominato come loro rispettivi Plenipotenziari: Sua Maestà il Re d'Italia, il Nobile Emilio Visconti Venosta, Gran Cordone dei suoi Ordini dei Santi Maurizio e Lazzaro, e della corona d'Italia, Deputato al Parlamento, e suo Ministro Segretario di Stato per gli Affari Esteri; e gli Stati

Cordon of his orders of the Saints Maurice and Lazarus, and
 17 of the Crown of Italy, Deputy in Parliament, and his Minister Secretary of State for Foreign Affairs; and the said Plenipotentiaries having exchanged their full powers, found in good and due form, have concluded and signed the following articles:

ARTICLE I.

There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

Italian citizens in the United States, and citizens of the United States in Italy, shall mutually have liberty to enter with their ships and cargoes all the ports of the United States and of Italy respectively, which may be open to foreign commerce. They shall also have liberty to sojourn and reside in all parts whatever of said territories. They shall enjoy, respectively, within the States and possessions of each party, the same rights, privileges, favors, immunities, and exemptions for their commerce and navigation as the natives of the country wherein they reside, without paying other or higher duties or charges than are paid by the natives, on condition of their submitting to the laws and ordinances there prevailing.

War vessels of the two powers shall receive in their respective ports the treatment of those of the most favored nations.

ARTICLE II.

The citizens of each of the high contracting parties shall have liberty to travel in the states and

Uniti d'America, Giorgio Perkins Marsh, loro Inviato Straordinario e Ministro Plenipotenziario presso Sua Maestà il Re d'Italia; e i predetti Plenipotenziari avendo scambiato i loro pieni poteri, trovati in buona e debita forma, hanno conchiuso e firmato i seguenti articoli:

ARTICOLO I.

Vi sarà fra i territori delle alte parti contraenti reciproca libertà di commercio e di navigazione.

I cittadini italiani negli Stati Uniti ed i cittadini degli Stati Uniti in Italia avranno scambievolmente libertà d'entrare coi loro bastimenti e carichi in tutti quei porti dell' Italia e degli Stati Uniti, rispettivamente, che possono essere aperti al commercio estero.

Essi avranno pure libertà di soggiornare e risiedere in qualsivoglia parte dei detti territori.

Essi godranno rispettivamente negli stati e possedimenti di ciascuna parte, gli stessi diritti, privilegi, favori, immunità ed esenzioni pel loro commercio e navigazione che i nativi del paese in cui risiedono, senza pagare altri o maggiori diritti o gravami di quelli pagati da questi ultimi, sotto condizione d'assoggettarsi alle leggi e regolamenti in vigore.

Le navi da guerra delle due potenze riceveranno nei rispettivi loro porti il trattamento di quelle della nazione più favorita.

ARTICOLO II.

I cittadini di ciascuna delle alte parti contraenti avranno libertà di viaggiare negli stati e territori

territories of the other, to carry on trade, wholesale and retail, to hire and occupy houses and warehouses, to employ agents of their choice, and generally to do anything incident to or necessary for trade, upon the same terms as the natives of the country, submitting themselves to the laws there established.

dell' altra, d'esercitare il commercio all' ingrosso ed al minuto, di prendere in affitto ed occupare case e magazzini, d'impiegare agenti a loro scelta, ed in generale di fare qualunque cosa incidente o necessaria al commercio, alle medesime condizioni dei nazionali, sottomettendosi alle leggi in vigore.

18

ARTICLE III.

The citizens of each of the high contracting parties shall receive, in the states and territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives.

They shall, however, be exempt in their respective territories from compulsory military service, either on land or sea, in the regular forces, or in the national guard, or in the militia. They shall likewise be exempt from any judicial or municipal office, and from any contribution whatever, in kind or in money, to be levied in compensation for personal services.

ARTICLE IV.

The citizens of neither of the contracting parties shall be liable, in the states or territories of the other, to any embargo, nor shall they be detained with their vessels, cargoes, merchandise, or effects, for any military expedition, nor for any public or private purpose whatsoever, without allowing to those interested a

ARTICOLO III.

I cittadini di ciascuna delle alte parti contraenti riceveranno negli stati e territori dell' altra la più costante protezione e sicurezza per le loro persone e proprietà, e godranno a questo riguardo degli stessi diritti e privilegi che sono o saranno accordati ai nazionali, purchè si sottomettano alle condizioni imposte a questi ultimi. Essi andranno per altro esenti nei loro rispettivi stati dal servizio militare obbligatorio, sì nell' esercito che nella marina, nelle forze regolari o nella guardia nazionale o nella milizia. Essi saranno pure esenti da ogni ufficio giudiziario o municipale, e da ogni contribuzione di sorta in natura o in danaro che fosse esatta in compenso di servizi personali.

ARTICOLO IV.

I cittadini di nessuna delle parti contraenti saranno sottomessi negli stati o territori dell' altra a niun embargo, nè trattieneuti colle loro navi, carichi, mercanzie od effetti per qualunque spedizione militare, nè per qualsivoglia motivo pubblico o privato, senza che venga accordata agli' interessati un' indennità

sufficient indemnification previously agreed upon when possible.

sufficiente, previamente convenuta, quando sia possibile.

ARTICLE V.

ARTICOLO V.

The high contracting parties agree that whatever kind of produce, manufactures, or merchandise of any foreign country can be from time to time lawfully imported into the United States, in their own vessels, may be also imported in Italian vessels; that no other or higher duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other; and, in like manner, that whatsoever kind of produce, manufactures, or merchandise of any foreign country can be from time to time lawfully imported into Italy in its own vessels, may be also imported in vessels of the United States, and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other; and they further agree that whatever may be lawfully exported and re-exported from the one country, in its own vessels, to any foreign country, may in the like manner be exported or re-exported in the vessels of the other country, and the same bounties, duties, and drawbacks shall be allowed and collected, whether such exportation or re-exportation be made in vessels of the United States or of Italy.

Le alte parti contraenti convengono che qualunque specie di prodotto, manifattura o mercanzia di uno stato estero la cui importazione in Italia possa essere di quando in quando coi suoi propri bastimenti permessa dalle leggi, possa essere pure importata coi bastimenti degli Stati Uniti; che nessun maggiore od altro diritto sul tonnellaggio del bastimento o sul carico sarà posto e percepito, sia che l'importazione si faccia coi bastimenti dell' uno stato o dell' altro; e nella stessa maniera che qualunque specie di prodotto, manifattura e mercanzia di uno stato estero la cui importazione negli Stati Uniti coi suoi propri bastimenti possa essere di quando in quando dalle leggi permissa, possa essere pure importata coi bastimenti Italiani, e che nessun maggiore od altro diritto sul tonnellaggio del bastimento o sul suo carico sarà posto e percepito, sia che l'importazione si faccia coi bastimenti dell' uno stato o dell' altro; ed esse inoltre convengono che tutto ciò la cui importazione o riesportazione da uno dei due stati ad uno stato estero coi suoi proprii bastimenti, sia permessa dalle leggi, possa nella stessa guisa venir esportato o riesportato coi bastimenti dell' altro stato, e che gli stessi premi, diritti e rimborsi di diritti saranno concessi e percepiti, sia che tale esportazione o riesportazione si faccia coi bastimenti dell' Italia o degli Stati Uniti.

ARTICLE VI.

No higher or other duties shall be imposed on the importation into the United States of any articles, the produce or manufactures of Italy, and no higher or other duties shall be imposed on the importation into Italy of any articles, the produce or manufactures of the United States, than are or shall be payable on the like articles, being the produce or the manufactures of any other foreign country; nor shall any other or higher duties or charges be imposed, in either of the two countries, on the exportation of any articles to the United States or to Italy, respectively, than such as are payable on the exportation of the like articles to any foreign country, nor shall any prohibition be imposed on the importation or the exportation of any articles, the produce or manufactures of the United States or of Italy, to or from the
 20 territories of the United States, or to or from the territories of Italy, which shall not equally extend to all other nations.

ARTICLE VII.

Vessels of the United States arriving at a port of Italy, and, reciprocally, vessels of Italy arriving at a port of the United States, may proceed to any other port of the same country, and may there discharge such part of their original cargoes as may not have been discharged at the port where they first arrived. It is, however, understood and agreed that nothing contained in this article shall apply to the coastwise navigation, which each of

ARTICOLO VI.

Nessun altro o maggiore diritto sarà posto sull' importazione in Italia di qualunque articolo, prodotto del suolo o dell' industria degli Stati Uniti, e nessun altro o maggior diritto sarà posto sull' importazione negli Stati Uniti di qualunque articolo, prodotto del suolo o dell' industria dell' Italia, di quelli che devono o dovranno pagarsi sopra identici articoli costituenti il prodotto del suolo o dell' industria di un altro stato estero; nè nessun altro o maggior diritto o imposizione sarà posto in uno di questi due stati sull' esportazione di qualunque articolo in Italia o agli Stati Uniti rispettivamente, di quelli che devono pagarsi sopra gl' identici articoli che si esportano ad uno stato estero; nè nessuna proibizione sarà posta sull' importazione o esportazione di qualunque articolo prodotto del suolo o dell' industria d' Italia o degli Stati Uniti, ai o dai territori d' Italia, ai o dai territori degli Stati Uniti che non sia egualmente estesa a tutte le altre nazioni.

ARTICOLO VII.

Le navi d' Italia che arrivano in un porto degli Stati Uniti, e reciprocamente, le navi degli Stati Uniti che arrivano in un porto d' Italia, possono procedere ad un altro porto dello stesso stato, ed ivi scaricare quella parte del loro primitivo carico che possono non avere scaricata al porto dove arrivarono. È però inteso e convenuto che nessuna disposizione contenuta in questo articolo si applicherà alla navigazione di costa d' ambedue

the two contracting parties reserves exclusively to itself.

gli stati, che ciascuna delle due parti contraenti si riserva esclusivamente per sé.

ARTICLE VIII.

The following shall be exempt from paying tonnage, anchorage, and clearance duties in the respective ports :

1st. Vessels entering in ballast, and leaving again in ballast, from whatever port they may come.

2. Vessels passing from a port of either of the two states into one or more ports of the same state, therein to discharge a part or all of their cargo, or take in or complete their cargo, whenever they shall furnish proof of having already paid the aforesaid duties.

3. Loaded vessels entering a port either voluntarily or forced from stress of weather, and leaving it without having disposed of the whole or part of their cargoes, or having therein completed their cargoes.

No vessel of the one country, which may be compelled to enter a port of the other, shall be regarded as engaging in trade if it merely breaks bulk for repairs, transfers her cargo to another vessel on account of unseaworthiness, purchases stores, or
21 sells damaged goods for re-exportation. It is, however, understood that all portions of such damaged goods destined to be sold for internal consumption shall be liable to the payment of custom duties.

ARTICLE IX.

When any vessel belonging to the citizens of either of the contracting parties shall be wrecked,

ARTICOLO VIII.

Saranno esenti dal pagare i diritti di tonnelloaggio, di ancoraggio e di spedizione nei porti rispettivi :

1°. Le navi che entrate in zavorra ripartiranno in zavorra, da qualunque porto provengano.

2°. Le navi che sieno passate da un porto di uno dei due stati in uno o più porti del medesimo stato, per deporvi in tutto o in parte il loro carico, per prendervelo e completarvelo, ogni qualvolta forniscano la prova d'aver già pagato i diritti summenzionati.

3°. Le navi che, entrate col carico in un porto, o volontariamente o pel cattivo tempo, ne usciranno senza aver disposto di tutto o di parte del loro carico, o senza averlo ivi completato.

Nessuna nave di uno degli stati che sia forzata ad entrare in un porto dell' altro, si reputerà fare operazioni di commercio, se avrà scaricato delle mercanzie semplicemente per restauri, trasbordato il suo carico sopra altra nave in caso d'innavigabilità della prima, comprato vettovalie o venduto mercanzie avariate per la riesportazione. È però inteso che ogni porzione di tali merci avariate, destinate ad esser vendute per la consumazione interna, sarà soggetta al pagamento dei relativi diritti di dogana.

ARTICOLO IX.

Quando una nave appartenente ai cittadini di una delle parti contraenti venisse a naufragare, af-

foundered, or shall suffer any damage, on the coasts or within the dominions of the other, there shall be given to it all assistance and protection in the same manner which is usual and customary with the vessels of the nation where the damage happens, permitting them to unload the said vessel, if necessary, of its merchandise and effects, and to reload the same, or part thereof, paying no duties whatsoever but such as shall be due upon the articles left for consumption.

ARTICLE X.

Vessels of either of the contracting parties shall have liberty, within the territories and dominions of the other, to complete their crew, in order to continue their voyage, with sailors articled in the country, provided they submit to the local regulations and their enrolment be voluntary.

ARTICLE XI.

All ships, merchandise, and effects belonging to the citizens of one of the contracting parties, which may be captured by pirates, whether within the limits of its jurisdiction or on the high seas, and may be carried or found in the rivers, roads, bays, ports, or dominions of the other, shall be delivered up to the owners, they proving, in due and proper form, their rights before the competent tribunals; it being well understood that the claim should be made within the term of one year, by the parties themselves, their attorneys, or agents of the respective governments.

fondare o soffrire qualche avaria sulle coste o nei domini dell'altra, le sarà concesso ogni assistenza e protezione nello stesso modo che si usa e costuma colle navi dello stato ove avvenne l'infortunio, permettendo alla medesima di scaricare, se è necessario, il suo contenuto, mercanzie ed effetti, e di ricaricare lo stesso contenuto o parte di esso, senza pagare nessun diritto di sorta, eccetto quello che può essere dovuto sopra gli articoli lasciati per la consumazione.

ARTICOLO X.

Le navi di una delle parti contraenti avranno libertà, nei territori e domini dell'altra, di completare il proprio equipaggio per poter proseguire il viaggio con marinai arruolati nel paese, semprechè si conformino ai regolamenti locali, e il loro arruolamento sia volontario.

ARTICOLO XI.

Le navi, mercanzie ed effetti appartenenti ai cittadini di una delle alte parti contraenti, che fossero state predate dai pirati, sia nei limiti della sua giurisdizione, o in alto mare, e fossero trasportate o trovate nelle rade, fiumi, baie, porti o domini dell'altra, saranno consegnate ai loro proprietari, purchè provino in debita e giusta forma i loro diritti avanti i competenti tribunali; è però inteso che il reclamo dovrà esser fatto nel termine di un (1) anno, dalle parti stesse, dai loro procuratori, o dagli agenti dei rispettivi governi.

ARTICLE XII.

The high contracting parties agree that, in the unfortunate event of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party.

ARTICLE XIII.

The high contracting parties having agreed that a state of war between one of them and a third power shall not, except in the cases of blockade and contraband of war, affect the neutral commerce of the other, and being desirous of removing every uncertainty which may hitherto have arisen respecting that which, upon principles of fairness and justice, ought to constitute a legal blockade, they hereby expressly declare that such places only shall be considered blockaded as shall be actually invested by naval forces capable of preventing the entry of neutrals, and so stationed as to create an evident danger on their part to attempt it.

ARTICLE XIV.

And whereas it frequently happens that vessels sail for a port or a place belonging to an enemy without knowing that the same is besieged, blockaded, or invested, it is agreed that every

ARTICOLO XII.

Le alte parti contraenti conven-gono che verificandosi la sventura di una guerra fra esse, la proprietà privata dei rispettivi loro cittadini e sudditi, ad eccezione del contrabbando di guerra, sarà in alto mare, o in qualsivoglia altro luogo, esente da cattura o da confisca per parte delle navi armate o delle forze militari d'ambo le parti; è però inteso che questa esenzione non si estenderà alle navi ed ai loro carichi che tentino di entrare in un porto bloccato dalle forze navali dell' una o dell' altra parte.

ARTICOLO XIII.

Le alte parti contraenti avendo convenuto che lo stato di guerra fra una di esse ed una terza potenza, eccetto i casi di blocco e di contrabbando di guerra, non avrà influenza sul commercio neutrale dell' altra, e bramando rimuovere ogni dubbio che possa finora essere stato elevato riguardo a quanto è necessario secondo i principii d' equità e di giustizia per costituire un blocco legale, esse qui espressamente dichiarano che saranno considerati come bloccati soltanto quei luoghi che saranno effettivamente investiti da forze navali capaci d' impedire l' accesso ai neutrali, e in guisa disposte da creare, per parte dei medesimi un evidente pericolo d' entrarvi.

ARTICOLO XIV.

E considerando che di frequente avviene che dei bastimenti navighino verso un porto od una piazza appartenente al nemico senza sapere che la medesima è assediata, bloccata o investita, è

vessel so circumstanced may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo, if not contraband of war, be confiscated, unless, after a warning of such blockade or investment from an officer commanding a vessel of the blockading forces, by an endorsement of such officer on the papers of the vessel, mentioning the date and the latitude and longitude where such endorsement was made, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either, that may have entered into such a port before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor, if found therein after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof; and if any vessel, having thus entered any port before the blockade took place, shall take on board a cargo after the blockade be established, she shall be subject to being warned by the blockading forces to return to the port blockaded and discharge the said cargo, and if, after receiving the said warning, the vessel shall persist in going out with the cargo, she shall be liable to the same consequences as a vessel attempting to enter a blockaded port after being warned off by the blockading forces.

ARTICLE XV.

The liberty of navigation and commerce secured to neutrals by

convenuto che ogni bastimento che si trovi in siffatte condizioni può essere respinto da quel porto o da quella piazza, ma non sarà trattenuto, ne verrà confiscata nessuna parte del suo cari se non sia contrabbando di guerra, a meno che dopo d'aver ricevuto avviso di quel blocco od investimento da un ufficiale comandante una nave che faccia parte delle forze bloccanti, mediante annotazione fatta dal medesimo sulle carte della nave, menzionante la data e la latitudine e longitudine in cui detta annotazione venne fatta, esso di nuovo tenterà di entrare; ma gli sarà però messo d'andare ad un altro porto o piazza che crederà conveniente. E neppure a nessuna nave di una delle parti che sia entrata in un porto prima che questo fosse effettivamente assediato, bloccato o investito dall'altra, sarà impedito d'uscirne col suo carico, e se dessa vi si trovasse dentro dopo la conquista o la resa, non sarà, nè la nave nè il suo carico, sottoposto a confisca, ma saranno restituiti ai loro proprietari, e se una nave entrata nel porto prima che il blocco avesse luogo, dopo che questo è stabilito, prenderà a bordo del carico, sarà soggetta ad essere avvertita dalle forze bloccanti di tornare al porto bloccato e di deporre il carico, e se dopo aver ricevuto tale avviso la nave persisterà nel voler partire col carico, essa andrà sottoposta alle stesse conseguenze di una nave che tenti d'entrare in un porto bloccato dopo averne ricevuto avviso dalle forze bloccanti.

ARTICOLO XV.

La libertà di commercio e navigazione, dal presente trattato as-

the stipulations of this treaty shall extend to all kinds of merchandise, excepting those only which are distinguished by the name of contraband of war. And, in order to remove all causes of doubt and misunderstanding upon this subject, the contracting parties expressly agree and declare that the following 24 articles, and no others, shall be considered as comprehended under this denomination:

1. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuses, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, bombs, grenades, powder, matches, balls, and all other things belonging to, and expressly manufactured for, the use of these arms.

2. Infantry belts, implements of war and defensive weapons, clothes cut or made up in a military form and for a military use.

3. Cavalry belts, war saddles and holsters.

4. And generally all kinds of arms and instruments of iron, steel, brass, and copper, or of any other materials manufactured, prepared, and formed expressly to make war by sea or land.

ARTICLE XVI.

It shall be lawful for the citizens of the United States, and for the subjects of the Kingdom of Italy, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandise laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with either of the contracting parties. It shall likewise be lawful for the citizens

sicurata ai neutrali, si estenderà ad ogni specie di mercanzia, eccetto solo quelle indicate col nome di contrabbando di guerra. E allo scopo di rimuovere ogni causa di dubbio e malinteso in questo proposito, le parti contraenti espressamente convengono e dichiarano che i seguenti oggetti e non altri si considereranno compresi sotto questa denominazione:

1°. Cannoni, mortai, colubrine, obizzi, moschetti, fucili semplici o rigati, rifles, pistole, carabine, picche, spade, sciabole, lance, aste, alabarde, bombe, granate, polvere, micce, palle ed ogni altra cosa ad esse appartenente ed espressamente manipolata per uso di queste armi.

2°. Cuojami da infanteria, istrumenti di guerra e armi difensive, abiti tagliati o fatti in forma militare e per uso militare.

3°. Cuojami da cavalleria, selle da guerra e fonde.

4°. E generalmente ogni specie di armi ed istrumenti di ferro, acciaio, ottone e rame, e d'ogni altra materia manufatta, preparata e formata espressamente a far la guerra in terra o in mare.

ARTICOLO XVI.

Sarà permesso ai sudditi italiani ed ai cittadini degli Stati Uniti di navigare coi loro bastimenti, con ogni maniera di libertà e sicurezza, senza che nessuna distinzione venga fatta a chi appartengono le mercanzie caricate sui medesimi, da qualunque porto ai luoghi di coloro che sono o saranno in avvenire in ostilità con una o coll' altra delle parti contraenti. Sarà parimente permesso ai precitati cittadini di navi-

aforesaid to sail with the ships and merchandise before mentioned, and to trade with the same liberty and security from the places, ports, and havens of those who are enemies of both or either party without any opposition or disturbance whatever, not only directly from the places of the enemy before mentioned to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power or under several; and it is hereby stipulated that free ships shall also give freedom to goods, and that everything shall be deemed to be free and exempt from

25 capture which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading or any part thereof should appertain to the enemies of the other, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board of a free ship; and they shall not be taken out of that free ship unless they are officers or soldiers, and in the actual service of the enemy. Provided, however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only who recognize this principle, but if either of the two contracting parties shall be at war with a third, and the other neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle, and not of others.

gare coi bastimenti e mercanzie sopra ricordate, e d'esercitare il commercio colla stessa libertà e sicurezza dalle piazze, porti e rade di coloro che son nemici d'ambidue o di una delle parti, senza nessuna opposizione o disturbo di sorta, non solo direttamente dai luoghi del nemico sopra ricordati ai luoghi dei neutrali, ma eziandio da uno ad un altro luogo appartenente ad un nemico, sieno essi sotto la giurisdizione di una o più potenze. Ed è pure qui stipulato che nave libera rende libera la merce, e che sarà reputato libero ed esente da cattura tutto ciò che sarà trovato a bordo delle navi appartenenti ai cittadini di una delle parti contraenti, quantunque l'intero carico, od una parte di esso appartenga ai nemici dell'altra, eccetto sempre il contrabbando di guerra. E inoltre convenuto nello stesso modo, che la stessa libertà si estenda alle persone che si trovano a bordo di nave libera, e che esse non ne verranno tolte a meno che non sieno ufficiali o soldati, e al servizio attuale del nemico. A condizione tuttavia, e questo è qui convenuto, che le disposizioni contenute in questo articolo, le quali dichiarano che la bandiera cuopre la proprietà, s'intenderanno applicabili solo a quelle potenze che riconoscono questo principio, ma se una delle due parti contraenti sarà in guerra con una terza potenza, e l'altra neutrale, la bandiera del neutrale cuoprirà la proprietà dei nemici, i governi dei quali riconoscono questo principio, e non degli altri.

ARTICLE XVII.

All vessels sailing under the flag of the United States, and furnished with such papers as their laws require, shall be regarded in Italy as vessels of the United States, and, reciprocally, all vessels sailing under the flag of Italy, and furnished with the papers which the laws of Italy require, shall be regarded in the United States as Italian vessels.

ARTICOLO XVII.

Tutti i bastimenti che navigheranno sotto la bandiera d'Italia, muniti delle carte richieste dalla legislazione della medesima, saranno negli Stati Uniti considerati come bastimenti dell'Italia, e reciprocamente tutti i bastimenti che navigheranno sotto la bandiera degli Stati Uniti, muniti delle carte richieste dalla legislazione dei medesimi, saranno considerati in Italia come bastimenti degli Stati Uniti.

ARTICLE XVIII.

In order to prevent all kinds of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they have agreed, mutually, that whenever a vessel of war shall meet with a vessel not of war of the other contracting party, the first shall remain at a convenient distance, and may send its
26 boat, with two or three men only, in order to execute the said examination of the papers, concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment; and it is expressly agreed that the unarmed party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other purpose whatever.

ARTICOLO XVIII.

Allo scopo d'impedire ogni disordine nella visita e nell'esame delle navi e dei carichi d'ambidue le parti contraenti, in alto mare, esse hanno mutuamente consentito che qualora una nave da guerra ne incontri un'altra che tale non sia, dell'altra parte contraente, la prima rimarrà a conveniente distanza e potrà inviare il suo battello con due o tre uomini solamente affine di procedere all suddetto esame delle carte concernenti la proprietà della nave e del carico, senza cagionare la minima estorsione, vio lenza o cattivi trattamenti. Ed è espressamente convenuto che in alcun caso si esigerà che la parte non armata vada a bordo della nave che vuol far la visita per mostrare le sue carte o per qualunque altro siasi scopo.

ARTICLE XIX.

It is agreed that the stipulations contained in the present treaty, relative to the visiting and examining of a vessel, shall apply only to those which sail without a convoy; and when said

ARTICOLO XIX.

È convenuto che le disposizioni contenute nell presente Trattato relative alla visita ed all'esame di una nave, saranno applicabili solo a quelle che navigano senza un convoglio, e nel

vessels shall be under convoy the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries, and when bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

ARTICLE XX.

In order effectually to provide for the security of the citizens and subjects of the contracting parties, it is agreed between them that all commanders of ships of war of each party, respectively, shall be strictly enjoined to forbear from doing any damage to, or committing any outrage against, the citizens or subjects of the other, or against their vessels or property; and if the said commanders shall act contrary to this stipulation, they shall be severely punished, and made answerable in their persons and estates for the satisfaction and reparation of said damages, of whatever nature they may be.

ARTICLE XXI.

If by any fatality, which cannot be expected, and which
27 may God avert, the two contracting parties should be engaged in a war with each other, they have agreed and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects wherever they please, with the safe conduct necessary to protect them

caso contrario la dichiarazione verbale del comandante del convoglio sulla sua parola d'onore che le navi poste sotto la sua protezione appartengono alla nazione di cui egli porta la bandiera, e, quando sien diretti ad un porto nemico, che non hanno contrabbando di guerra, sarà sufficiente.

ARTICOLO XX.

Allo scopo di provvedere efficacemente alla sicurezza dei cittadini e sudditi delle parti contraenti, esse convengono tra loro che sarà irragionevolmente prescritto a tutti i comandanti delle navi da guerra di ciascuna parte rispettivamente, d'astenersi dal far danno o commettere oltraggi sulle persone dei cittadini o sudditi dell'altra, o sulle loro navi o proprietà; e se i sopradetti comandanti agiranno contrariamente a queste disposizioni, saranno severamente puniti e resi responsabili nelle loro persone e proprietà per la soddisfazione e riparazione dei predetti danni di qualunque natura essi sieno.

ARTICOLO XXI.

Se per impreveduta sventura, che Dio tolga, le due parti contraenti s'impegnassero in guerra tra loro, esse hanno convenuto e convengono, ora per allora, che sarà concesso il termine di sei mesi ai mercanti che risiedono sulle coste e nei porti dell'una e dell'altra, ed il termine di un anno a coloro che abitano nell'interno per sistemare i loro affari e trasportare i loro effetti dove lor piaccia, col salvo-condotto necessario a proteggere loro e le loro proprietà, fino all'arrivo nei porti indicati pel loro imbarco; e alle donne e

and their property, until they arrive at the ports designated for their embarkation. And all women and children, scholars of every faculty, cultivators of the earth, artisans, mechanics, manufacturers, and fishermen, unarmed and inhabiting the unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the belligerent in whose power, by the events of war, they may happen to fall; but, if it be necessary that anything should be taken from them for the use of such belligerent, the same shall be paid for at a reasonable price.

And it is declared that neither the pretence that war dissolves treaties, nor any other whatever, shall be considered as annulling or suspending this article; but, on the contrary, that the state of war is precisely that for which it is provided, and during which its provisions are to be sacredly observed as the most acknowledged obligations in the law of nations.

ARTICLE XXII.

The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or otherwise, and their representatives, being citizens of the other party, shall succeed to their personal goods, whether by testament or *ab intestato*, and they may take

ai ragazzi, agli studenti d'ogni facoltà, ai coltivatori del suolo, artigiani, meccanici, manifattori e pescatori, inermi e dimoranti in città, villaggi e luoghi non fortificati, ed in generale a tutti coloro le occupazioni dei quali sono dirette alla sussistenza comune ed a beneficio dell'umanità, sarà concesso di continuare nelle rispettive faccende, e non verranno molestati nelle loro persone, nè le loro case saranno bruciate o in altra guisa distrutte, nè i loro campi devastati dalle forze armate dei belligeranti in portere dei quali sien caduti per accidente di guerra; ma se fia necessario che si tolga loro alcuna cosa per usa dei belligeranti, la medesima sarà pagata ad un prezzo ragionevole.

E si dichiara che nè la pretesa che la guerra scioglie ogni trattato, nè qualsivoglia altra si reputerà annullare o sospendere questo articolo; ma al contrario che lo stato di guerra è precisamente quello per cui vien così disposto, ed è per la sua durata che questi provvedimenti dovranno religiosamente osservarsi come gli obblighi i più riconosciuti nel diritto internazionale.

ARTICOLO XXII.

I cittadini di ciascuna delle parti contraenti potranno disporre dei loro beni mobili posti nella giurisdizione dell'altra, per vendita, do nazione, testamento o in qualsivoglia altro modo, e i loro rappresentanti, i quali sien cittadini dell'altra parte, succederanno nei loro beni mobili, sia per testamento che *ab intestato*, e potranno prenderne pos-

possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein such goods are shall be subject to pay in like cases.

As for the case of real estate, the citizens and subjects of the two contracting parties shall be treated on the footing of the most favored nation.

ARTICLE XXIII.

The citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives. They shall therefore be free to employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors as they may judge proper, in all their trials at law; and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them, and likewise at the taking of all examinations and evidences which may be exhibited in the said trials.

ARTICLE XXIV.

The United States of America and the Kingdom of Italy mutually engage not to grant any particular favor to other nations, in respect to commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation if the concession was conditional.

nesso in persona o per mezzo d'altri che agiscano in loro nome, o disporne a volontà, pagando que diritti soltanto che gli abitanti dello stato in cui tali beni son posti, sono obbligati a pagare in simili casi.

Trattandosi di possedimento di beni immobili, i cittadini e sudditi delle due parti contraenti saranno trattati sul piede della nazione più favorita.

ARTICOLO XXIII.

I cittadini dell'una e dell'altra parte avranno libero accesso ai tribunale di giustizia per mantenere e difendere i loro diritti, senza altre condizioni, restrizioni e tasse all'infuori di quelle imposte ai nazionali; essi saranno in conseguenza liberi d'impiegare in difesa dei loro dritti gli avvocati, sollecitatori, notari, agenti e facitori che essi giudichino convenienti in tutte le loro cause, e tali cittadini o agenti avranno facoltà di assistere alle decisioni e sentenze dei tribunali in tutte le cause che li concernono, come pure di assistere agli esami e deposizioni che possano prodursi nei giudizi medesimi.

ARTICOLO XXIV.

Il Regno d'Italia e gli Stati Uniti d'America s'impegnano scambievolmente a non accordare nessun favore particolare alle altre nazioni, in materia di commercio e navigazione, che non divenga immediatamente comune all'altra parte, la quale ne godrà liberamente, se la concessione venne liberamente fatta, o accordando egual compenso, se la concessione fu condizionale.

The present treaty shall continue in force for five (5) years from the day of the exchange of the ratifications; and if, twelve (12) months before the expiration of that period, neither of the high contracting parties shall have announced to the other, by an official notification, its intention to terminate the said treaty, it shall remain obligatory on both parties one (1) year beyond that time, and so on until the expiration of the twelve (12) months, which will follow a similar notification, whatever may be the time when such notification shall be given.

ARTICLE XXVI.

The present treaty shall be approved and ratified by His Majesty the King of Italy, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the ratifications shall be exchanged at Washington within twelve months from the date hereof, or sooner if possible.

In faith whereof the Plenipotentiaries of the contracting parties have signed the present treaty in duplicate, in the English and Italian languages, and thereto affixed their respective seals.

Done at Florence, this twenty-sixth day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[L. S.] GEORGE P. MARSH.
[L. S.] VISCONTI VENOSTA.

Il presente trattato sarà in vigore per cinque (5) anni a decorrere dal giorno dello scambio delle ratifiche, e se dodici (12) mesi prima dello spirare di questo periodo, niuna delle alte parti contraenti avrà ufficialmente annunciato all' altra la sua intenzione di por termine al detto trattato, esso resterà obbligatorio per ambo le parti per un (1) anno ancora, e così di seguito fino allo spirare dei dodici (12) mesi che seguiranno tale notificazione, qualunque sia il tempo in cui la medesima avrà avuto luogo.

ARTICOLO XXVI.

Il presente trattato sarà approvato e ratificato da Sua Maestà il Re d'Italia e dal Presidente degli Stati Uniti per e con l'avviso e consenso del Senato dei predetti stati, e le ratifiche saranno scambiate a Washington entro dodici mesi dalla data del presente, o più presto se è possibile.

In fede di che, i plenipotenziari delle parti contraenti hanno firmato il presente trattato in duplicato in lingua italiana ed inglese, e vi hanno apposto i loro rispettivi sigilli.

Fatto a Firenze questo vigesimo sesto giorno di febbrajo nell' anno del nostro Signore mille ottocento settant'uno.

[L. S.] VISCONTI VENOSTA.
[L. S.] GEORGE P. MARSH.

And whereas the said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at Washington on the eighteenth instant :

Now, therefore, be it known that I, Ulysses S. Grant, President of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

30 In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-third day of November, in the year of our Lord one thousand eight hundred [SEAL.] and seventy-one, and of the Independence of the United States of America the ninety-sixth.

U. S. GRANT.

By the President :

HAMILTON FISH,
Secretary of State.

31 New Jersey Court of Errors and Appeals.

THE STATE, Defendant in Error,

vs.

ANNA VALENTINA, Plaintiff in Error.

On Writ of Error to the Bergen County Court of Oyer and Terminer on Conviction of Murder.

State of the Case.

James M. Trimble, Nathan Kussy, attorneys, and of counsel with plaintiff in error.

Ernest Koester, prosecutor of the pleas, attorney, and of counsel with defendant in error.

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Bergen County Oyer and Terminer.

THE STATE

vs.

ANNA VALENTINA.

On Indictment for Murder.

Transcript of testimony taken on the 13th day of April, 1904, at the Court House in the Town of Hackensack, in the County of Bergen, N. J., before Honorable Mahlon Pitney, Justice of the Supreme Court, Honorable David D. Zabriskie, Judge of the Court of Common Pleas, and a jury.

Appearances.

Ernest Koester, on behalf of the State.
Milton Demarest, Esq., for the defendant.

JAMES A. MORGAN, sworn on behalf of the State, testifies as follows:

Direct Examination by the PROSECUTOR:

Q. You are the coroner of this county?

A. Yes, sir.

Q. And do you remember the 10th day of March last when you were called to Lodi?

A. Yes, sir.

34 Q. To see one—what is her name?

A. Rosa Salza.

Q. Rosa Salza. Where did you find her?

A. Found her on the floor of the kitchen, dead.

Q. Well, whereabouts?

A. Well, it was—there was a door leading into another room; well, there was two doors leading into two rooms, I believe, and she lay in between the two doors.

Q. Was it upstairs or downstairs?

A. Upstairs.

Q. How many flights of stairs up?

A. I think three.

Q. And how did you acquire access to the rooms, stairway, from the outside or inside?

A. Well, stoop on the outside, and then stairs on the inside.

Q. Stairs from the inside?

A. From the inside to the rooms, yes.

Q. And what was the condition of the room?

A. Well, the room was—looked as if there had been a struggle, and the wall where the woman lay was bespattered with blood.

Q. Well, just about the quantity—give us the condition of the floors.

A. On the floor there was—

Q. And the furniture in the room?

A. Well, there was quite a large patch of blood there, I should

say—well, five or six feet long and by three or four feet wide, that was one patch, one solid patch of blood, and then there were several around the room, in different places, and also around the wall.

(By the COURT:)

Q. Bare floor, uncarpeted?

A. Bare floor, yes.

Further direct:

Q. What was the condition of the door leading into the room?

A. The lock was smashed off and a part of the woodwork.

Q. Which door?

35 A. The door leading from the hall into this woman's apartment.

Further direct:

Q. I show you a lock, and ask you if you saw that lock there?

A. Yes, sir; that is the lock.

Q. Where did you find that?

A. Found that; I think Mr. Cole had that in his hand when I went in.

Q. Now, about the door, as to being—where it was pushed in—I mean broken, or open at the time?

A. It seemed as though somebody had thrown their entire strength against it.

Q. Does the door open inward or outward?

A. Inward.

(By the COURT:)

Q. How was it standing?

A. On the hinges.

Q. Were the panels sprung?

A. I think the lower panel was—I am not sure about that, but there was a piece where the lock was—where the lock had been—there was a piece ripped off, as if it was torn off.

Further direct:

Q. Do you recognize that as the piece (showing the witness something)?

A. Yes, sir.

Q. Is that the piece that was torn off?

A. Yes, sir.

Q. Did you have an inquest?

A. Yes, sir.

Q. And held a post-mortem?

A. Yes, sir.

Q. Who performed the post-mortem?

A. Doctors Davenport and Brevoort.

Q. Where?

A. At Vanderplatt's morgue, Garfield.

Q. Were you present at the post-mortem?

A. No, sir.

Q. Who removed the body there?

A. Mr. Vanderplatt, the undertaker.

Q. Neither of the physicians was called to the house at the time?

A. No, sir; I accompanied the body to the morgue.

(By the COURT:)

Q. Delivered it over to whom?

A. Undertaker Vanderplatt.

Q. Did you know the woman when she was alive?

A. No, sir.

Cross-examination.

By Mr. DEMAREST:

Q. Coroner, when you arrived at this house, about what time was it?

A. I should judge it was about six o'clock.

(By the PROSECUTOR:)

Q. I did not ask you where this occurred?

A. Borough of Lodi.

Q. In this County?

A. Yes, sir.

Q. This was on the 10th of March?

A. This was on the 10th of March; yes, sir.

Cross-examination resumed:

Q. What did you see in the room, Coroner—was that the living room—did you see a cooking stove?

A. Cooking stove, and the table partly set.

Q. Was there anything on the stove cooking at the time?

A. Yes, sir; there was.

Q. What?

A. It looked like a stew to me. I did not examine that.

Q. Did you see a kitchen table there?

A. Yes, sir.

Q. Did you see anything on the table having been prepared or about to be prepared for a meal?

A. Well, there was some cups and saucers, I believe, and a sugar bowl.

37 Q. Did you see any meat on the table that had been cut?

A. Yes.

Q. Did you see any knife lying on the table with that meat?

A. No; I don't think I did.

Q. Did you see everything that was in that room when you went there?

A. Yes; I saw—I saw everything.

Q. Well, did you see any other knife around that room, except this one?

A. I did not see that knife there at all.

Q. Did you see any knife in that room while you were there?

A. I think I did see—no, I think it was a fork; I think it was a fork on the table.

Q. You did not see any knife at all?

A. No; I did not see any knife.

Q. Wasn't it salt pork that was frying on the stove?

A. It might have been, Mr. Demarest. I am not certain about that.

JAMES COLE, sworn on behalf of the State, testified as follows:

Direct examination by the PROSECUTOR:

Q. Mr. Cole, you are the marshal in Lodi, are you?

A. Yes, sir.

Q. And marshal there on the 10th of March?

A. Yes, sir.

Q. Did you know Rosa Salza in her lifetime?

A. Yes, sir.

Q. And were you called over there to the house on the 10th of March?

A. I was.

Q. Where she lived?

A. Yes, sir.

38 Q. Whereabouts did she live in Lodi?

A. Lived over in Mike Callucci's house—a three-story brick house.

Q. Three-story brick house, you say?

A. Yes, sir.

Q. Upstairs?

A. Upstairs.

Q. What time of the day were you called there?

A. Half-past five.

Q. Was anybody there before you?

A. Mr. Kerr was there, the recorder.

Q. What did you find there when you got there?

A. I found Rosa lying on the floor in a pool of blood.

Q. Rosa who?

A. Salza.

Q. Was she alive or dead at that time?

A. Dead.

Q. Did you examine the body to see what was the cause of death?

A. I just put my hand on her and seen she was dead. I seen a knife by the side of her and I picked up the knife.

Q. Is that the knife (showing witness knife)?

A. Yes, sir.

Q. Is that the blood that was on the knife at the time?

A. Yes, sir.

Q. This knife has been in your possession all the time?

A. Yes, sir.

Q. And what is this (showing witness a piece of board)?

A. A part of the door.

Q. What was the condition of the door as you found it?

A. Half of the lock was in the door and the other half I picked up on the floor.

Q. Is this the part you picked up on the floor?

A. Yes, sir.

39 Q. And the corresponding part—

A. Is in the door yet. The other part of it is in the door.

Q. And what was the condition of the door, Mr. Cole?

A. It was; the door was busted in toward the kitchen, and I found the lock, I guess, about six feet from the door. The woodwork I found in the middle by the stove.

Q. When was this?

A. It was March the 10th.

(By a JUROR:)

Q. What kind of a lock was it—mortise lock?

A. Mortise lock.

(By the PROSECUTOR:)

Q. And how thick was the door?

The COURT: You will have the door in evidence.

The PROSECUTOR: The door is in the other room. If we could get that door now—

The COURT: Just let the officer bring the door out.

(The door was brought into the court room and exhibited).

The COURT: Let the witness measure the *the* thickness of the door.

Q. What is the thickness of this door?

A. About an inch and a quarter.

Q. Is this the door?

A. Yes, sir; the door I took off.

Q. This door has been in your possession?

A. Yes, sir.

Q. What is the thickness of this door?

A. About an inch and a quarter.

Q. And where was this lock or this portion of the lock in reference to the door when you picked it up?

A. It was inside, in the kitchen.

40 The COURT: He has already told that the remaining part of the lock was in the door, as it is now.

Q. Were you present when the body was taken away?

A. Yes, sir.

Q. Who took the body away?

A. The coroner and Mr. Vanderplatt.

Q. And Mr. Vanderplatt himself, did he?

A. And the undertaker.

Cross-examination by Mr. DEMAREST:

Q. What time was it when you got there to the house, Mr. Cole?

A. Half-past five. I got there on the half-past five car—trolley car.

Q. You say you saw this knife lying by the side of Mrs. Salza, the woman?

A. Yes, sir.

Q. Did you see any preparation for meals going on there; did you see any arrangement there for the preparation of a meal?

A. I seen none, only a couple of packages on the table.

Q. Did you notice anything on the stove cooking?

A. No, sir.

Q. Or on the table?

A. No, sir.

Q. Any meat, or anything of that sort?

A. No, sir.

Q. Did you look around the room to see whether there were any other knives there or not?

A. No, sir.

Q. Did you find any other knife than this one?

A. No, sir.

Q. Just this knife and that alone. You don't know how that door got broken in that way?

The COURT: He don't know. He found it so.

41 ANDREW D. KERR, sworn on behalf of the State, testified as follows:

Direct examination by the PROSECUTOR:

Q. Mr. Kerr, you are the Recorder, are you, in the Borough of Lodi?

A. Yes, sir.

Q. Did you know Rosa Salza in her lifetime?

A. I did, sir.

Q. And did you see her on the 10th day of March last?

A. I did.

Q. Was she dead or alive at that time?

A. Dead.

Q. What time of the day was it?

A. About five o'clock, or a little after five.

Q. In the afternoon.

A. Yes, sir.

Q. And where did you see her?

A. On the third floor of Mike Callucci's brick house.

Q. Did you know where she lived?

A. Not until then.

Q. Do you know now—did she live there?

A. Yes, sir.

Q. How many children had they, do you know?

A. Two, I believe. Two little twins.

Q. Did you see them there?

A. No, sir; they had taken them away.

Q. When you saw her, about where was she lying?

A. Lying between the two bedrooms in the kitchen.

(By the COURT:)

Q. Did you see the bedroom doors?

A. Yes, sir.

Q. Was this in the Borough of Lodi?

A. In the Borough of Lodi.

(By the PROSECUTOR:)

Q. Did you see that knife (showing the witness a knife)?

A. I did, sir.

Q. Who found the knife?

A. I called Marshal Cole's attention to it, and he picked it up.

42 Q. Where was it lying?

A. Lying near her right knee.

Q. On the floor?

A. On the floor.

Q. Was it in the same condition as it is now?

A. Yes, only the blood was wet on it at that time.

Q. Did you see Anna Valentina there at that time?

A. No, sir.

Q. Did you observe the condition of that door?

A. Yes, sir.

Q. What was its condition when you got there?

A. Just as it is now, only it was hanging; it appeared to have been burst in.

Q. Did this door—was this door separating—did this door separate this room where the woman was found dead from the hall.

A. Yes, sir.

Q. Have you seen that lock before?

A. Yes, sir.

Q. Where did you see that?

A. About three or four feet from the bottom of that door, on the kitchen floor.

Q. And this strip of wood?

A. The same place, inside of it, and I called the attention of the Marshal to it, and he picked it up.

(By the COURT:)

Q. The door was hanging on its hinges?

A. Yes, sir.

Further direct:

Q. Was it ajar, or closed?

A. There had been other people in and out before, and it was about two feet open, the door was then.

Cross-examination by Mr. DEMAREST:

Q. Did you and the marshal go there together?

A. Yes, sir.

Q. Did you also make search around to see if there was any other knife at that place?

43 A. I looked around; I didn't make any search, but I did not see anything at all.

Q. Did you see any meat on the stove, cooking?

A. No, sir; there was a kettle of water boiling.

Q. Was there any meat on the table?

A. There was a package, and it might have been meat, and it might have been a bag of beans?

Q. Was any meat on the table cut or partially cut?

A. There was a little parcel there, and there was another bag there which I think was full of beans, and there was a pass book, that she might have brought from the grocery store with these goods.

(By the COURT:)

Q. Was the parcel unopened?

A. Yes, sir.

Q. Done up in paper?

A. Yes, sir.

Dr. GEORGE DAVENPORT, sworn on behalf of the State, testifies as follows:

Direct examination by the PROSECUTOR:

Q. Did you perform the autopsy on an Italian woman at Vanderplatt's place in Garfield in March last?

A. Yes, sir.

Q. What day was it?

A. March the 11th.

Mr. KOESTER: I intend to follow this up by showing this was the body, afterwards.

The COURT: Very well.

Q. You, of course, did not know the person who was killed?

A. No, sir.

Q. What did you find on that body?

A. It was a female body.

Q. About how old?

A. I should think 30 or under.

Q. About what size?

44 A. Medium size, probably a little under medium size.

Q. What wounds did you find, if any?

A. I found a large number of superficial and deep wounds, the most important being around the neck, I believe fifteen in all around the neck; some of them were deep punctured wounds, going down to the bony structure of the neck, and the others were glancing, that is they got from outside, they went in deep under the fascia. Some of those were running three inches in probing, and the external jugular veins were partially severed on each side. The superficial wounds were mainly on the hands and wrists, and some over the scalp; I believe there were three on the breasts—

Q. Who assisted in that autopsy?

A. Dr. Brevoort, of Lodi.

Q. Anyone else present?

A. Mr. Vanderplatt.

Q. From your examination as the result of that autopsy, what would you say was the cause of death?

A. The hemorrhage from this wound.

Q. Caused by what sort of an instrument?

A. Some sharp instrument.

Q. I show you a knife, and ask you if a knife like that could have produced those wounds?

A. Yes, sir.

No cross-examination.

By the Court:

Q. How many wounds were there around the neck?

A. Fifteen.

Q. Most of the wounds were about the neck, did you say?

A. No, sir; most of them were on the hands.

Q. How many were there about the hands?

A. They were almost numberless, they were not deep, as they went right down to the bone, all over the fingers, mostly the posterior portion of the fingers, that is the back of the hands and the fingers—there were numberless little cuts on them, and I think there were one or two wounds on the back of the hand.

45 Q. In what direction did they run?

A. Across, most of them, or some of them, obliquely across.

Q. How deep were they?

A. Well, those went right down, some of them, to the bones of the fingers on the hand.

Q. You did not count the number of them?

A. No, sir; they are almost numberless.

Q. Were they on both hands?

A. Yes, sir.

Q. Were there any wounds on the wrist?

A. A few.

Q. Any on the forearms?

A. No, sir.

Q. What part of the wrist were the wounds on?

A. On the back of the wrist.

Q. How many wounds were there on the chest, or about the breast?

A. Three.

Q. Where?

A. One just above the left breast and the other, I think, right on the breast, the others right over the sternum—the one on the sternum went down to the bone.

Q. The sternum is the middle bone of the chest?

A. Yes, sir; those were on the left side of the chest; those two near the breast were not very deep, but the one covering the sternum went down to the bony structure.

Q. Were there any wounds about the face?

A. I think there were two sight wounds on the face; one was on the face right here, and another up over the forehead; the one on the forehead was superficial; there was one deep gash near the top of the head, about over the center of the head.

Q. Now, these fifteen wounds about the throat and neck, let us understand them; were they on the front or back part of the neck?

A. One was in front here, and five on the left side of the neck, three in the posterior part of the neck, and six on the right side of the neck.

46 Q. Were they cutting wounds or stabbing wounds?

A. Stabbing wounds.

Q. Did you investigate to see what character of instrument they had been made of?

A. By investigating the wounds, yes sir—we probed the wounds.

Q. Could you tell the width of the wounds, as well as their depth?

A. Yes, sir; externally and internally to the superficial structures, but when you get down deep into the muscles it is difficult to tell the width of the wounds.

Q. Could you tell the breadth of the stab or the length of the slash through the skin?

A. Yes, sir.

Q. There were a number on either side, and both jugular veins were partially severed?

A. Yes, sir.

Q. To such an extent as to let out the blood?

A. Yes, sir.

Q. What was the natural consequence of such a wound as that severing the jugular vein?

A. To produce death by hemorrhage, unless they were promptly sutured.

Q. Those wounds that severed the jugular veins, were they stabbing wounds or cutting wounds?

A. There were so many I do not remember whether it was the slanting wounds or not; but I think it was.

Q. How deep was that?

A. Those slanting wounds varied from one and a half inches to three inches.

Q. How deep were the wounds that severed the jugular veins?

A. One inch to an inch and a half—right down to the bony structure of the neck; they cut down to the bony structure of the neck.

47 Dr. HENRY H. BREVOORT, sworn on behalf of the State, testified as follows:

Direct examination by the PROSECUTOR:

Q. You are a practising physician at Lodi?

A. Yes, sir.

Q. Do you remember being called—Did you know Rosina Salza in her lifetime?

A. Yes, sir.

Q. Did you afterwards see her dead?

A. Yes, sir.

Q. Where?

A. I saw her dead at her house, on the floor, on the night of the 10th, and I also saw her dead in Vanderplatt's morgue, in Garfield, on the 11th day of March last.

Q. The same person?

A. Yes, sir.

Q. And did you perform—did you assist in the autopsy?

A. Yes, sir.

Q. And just what did you find was the condition of the wounds, if any, on the body?

A. Well, she had around the neck fifteen stabbing wounds, five on the left side of the neck, six on the right side of the neck, three in the back part of the neck, and one in the front. These wounds, some of them, were superficial and some of them deep. They were from anywhere from a fraction of an inch to three inches deep. Those on the back went down to the bone; we also found the external jugular veins wounded, cut open on both sides.

By the Court:

Q. So as to allow the flow of blood out of them?

A. Yes, sir.

Further direct:

Q. Doctor, did you make an examination of the body of Mrs. Salza, when you saw her dead on the floor, too?

48 A. No, sir; nothing more than simply to look at her.

Q. Did you observe any wounds on her at that time?

A. We observed a few of the wounds on the neck, but there was so much blood, and the hair was matted around so that you could not make a very good examination.

— Well, from your examination, doctor, at the autopsy, what would you say was the cause of the death of Rosina Salza?

A. Hemorrhage from the result of these stabbing wounds.

Q. And those wounds were inflicted, in your judgment, by what kind of an instrument?

A. It must have been some sharp-pointed instrument.

Q. Would a knife like that have inflicted those wounds you discovered?

A. Yes, sir.

Q. When was this, doctor, that you saw her dead on the floor; and also when you made the autopsy?

A. I saw her dead on the floor on the evening of the 10th of March, a little after 6 o'clock, and we performed the autopsy on the 11th of March, in Vanderplatt's morgue, at Garfield.

By the Court:

Q. This last March?

A. Yes, sir.

Cross-examination by Mr. DEMAREST:

Q. Who else was at the house when you saw the deceased lying on the floor?

A. Coroner Morgan came at that time and Marshal Cole, and Mr. Buonocore, the court interpreter.

Q. Did you notice or take any special observation of the various articles in the room while you were there?

A. I noticed there were two or three chairs there, and there was a table and a package or two on it; there was a pan of water, I think, on the stove, I would not be positive about that statement.

Q. Did you notice anything cooking on the stove?

49 A. There was something on the stove, and the water was boiling; I think it was boiling water, simply boiling water; I don't know whether there was any meat in it, or not.

Q. Did you notice any meat on the table?

A. There were two packages on the table, I don't know what they were.

Q. You did not notice anything that you recognized as meat?

A. No, sir.

Q. Did you see any other knife around that room except that one that you have identified?

A. I did not see any knife in the room.

Redirect examination by Mr. KOESTER:

Q. Did you notice the condition of the door, doctor?

A. Yes, sir.

Q. Look at this door, and see if that is the one that you saw there?

A. That is the door.

Q. And what condition was it in in reference to the lock, when you saw it?

A. The door was on its hinges, and it was broken in that way when I saw it.

By the COURT:

Q. What other wounds, if any, did you see on this woman's body?

A. Three wounds on the chest, two on the left side, one above, and another one just below the nipple were fairly superficial, and one over the sternum, which was down to the bone. On the right side of the face there was a superficial wound and one superficial wound over about the right temple, and there was a scalp wound about the center of the head.

Q. How deep?

A. As I recollect, it went down to the bone, but I could not be positive about that; then there were numerous or numberless wounds on the hands, fingers, and the thumb.

Q. What part of the—

50 A. On the back.

Q. Is that true of one hand or both hands?

A. Both hands.

Q. How far did they extend toward the wrists?

A. Well, there was a few small cuts on the wrist.

Q. On the back of the wrists?

A. Yes, sir. These wounds were many in number, and some went to the bone, and some were superficial, and ran across and obliquely.

Q. Criss-cross?

A. Yes, sir.

Q. Were there as many on one hand, apparently, as on the other?

A. I should judge there were; there were so many it was most impossible to count them.

Q. With what sort of instrument, apparently, had they been made?

A. By a sharp edged instrument, I should say.

Q. By a knife?

A. Yes, sir.

LOUIS BUNOCORE, sworn as interpreter.

LOUISA NORGIA, sworn through the Interpreter, in behalf of the State, testifies as follows:

Direct examination by Mr. KOESTER:

Q. What is your name?

A. Louisa Norgia.

Q. Are you a married woman?

A. Yes, sir; married.

Q. And how many children have you?

A. Four.

Q. That little girl there, is she your child?

A. Yes, sir.

Q. How old is she?

A. Six years old.

Q. Where do you live Mrs. Norgia?

51 A. Near by the house where Anna Valentina lived.

Q. How far away?

A. About forty paces.

Q. Near by the house of whom?

A. Anna Valentina.

Q. The prisoner?

A. Yes, sir.

Q. Did you know Rosina Salza?

A. I knew her as long as I have been around here, but not before.

Q. You mean around Lodi, don't you?

A. Yes, sir.

Q. How long have you lived in Lodi?

A. In the first of September?

Q. And did you go to Rosina Salza's house on the 10th of last March?

A. I went there because the little girl came and called me.

Q. What little girl called you?

A. Antionetto.

Q. Do you mean by that, your little daughter who is here in Court, and who is six years old?

A. Yes, sir.

Q. What time of day was it that your daughter called you?

Q. And what time of day was it that your daughter called you?

A. It was four o'clock.

Q. Where had your daughter been?

The COURT: Does she know? Ask if she knows where her daughter was.

Q. Do you know where your daughter was?

A. I know that she called there every day to watch the babies.

The COURT: That is not proper; strike that out.

52 Q. When your daughter called you, where did you go?

A. Went over to the house of Rosa.

Q. Rosa Salza?

A. Yes, sir.

Q. Where did she live, upstairs or downstairs?

A. Upstairs, top floor.

Q. And where did you go when you got up stairs, which room did you go in?

A. The first room.

Q. Does the first room lead from the hall?

A. No, no.

Q. Well, where did you go then, when you got to the first room?

A. The first room was locked, and the other room further back was the room where Rosa was.

Q. How did you get in the first room?

The COURT: She didn't get into the first room; she says, as I understand the witness, she had to pass the closed door of a room before she reached the door of the room Rosa was in.

Q. Did you get into the room where you saw Rosa?

A. Yes, sir.

Q. Now, what did you see when you got there?

A. I seen Rosa on the floor, dead.

Q. Did you see this defendant there?

A. She was there stabbing her (as she indicates with her hand) on her breast.

Q. Stabbing what?

A. She was stabbing Rosa on the breast with the knife (as she indicates).

Q. I show you a knife, and ask you if that was the knife?

A. That is the knife; yes.

Q. What did you do then?

A. I got hold of Valentina by the hands, and I said, "God, you make her like a Crist (Christ); ain't you satisfied yet?"

Q. And are you sure this was the woman, the defendant?

53 A. Yes, sir.

Q. How long had you known Valentina?

A. From September.

Q. From the time you had lived in Lodi?

A. Yes, sir.

Q. What did Valentina, the defendant, say to you then when you said that to her?

A. Didn't say anything.

Q. What did she say, or where did she go?

A. She went over to her house.

By the COURT:

Q. Her house?

A. To her house.

Further direct:

Q. What became of this knife?

A. The knife was left on the floor.

Q. Did you see anybody else in the room when you came in there besides Rosa and the defendant?

A. No, sir.

Q. Did you see any babies there?

A. The babies on the floor, and I picked them up.

Q. How many babies were there?

A. One was on the bed, and one I picked up.

Q. And how many babies were there?

A. Two.

By the COURT:

Q. Did she pick this one up off the floor?

A. One off the floor and one on the bed.

Further direct:

Q. And how old were the babies?

A. Three months.

Q. Where was the baby lying on the floor, in relation to Rosa?

A. The baby was near by the mother, Anna; she had the baby under her feet.

Q. That is, the defendant had the baby under her feet?

A. Under her feet.

54 Q. And what was she doing when the baby was under her feet!

A. The baby cry.

Q. What was Annie doing when the baby—

A. She was stabbing on the mother of the child.

Q. What day of the month was this?

A. The 10th day of March.

Q. Last March?

A. Yes, sir.

Q. Are you sure this is the woman who did the stabbing?

The COURT: Oh, yes; she has already said that.

Q. Did you see the condition of the door?

A. I didn't see the door, the condition of the door, but I only see her on the floor, and I started to shake.

By the COURT:

Q. You found the door open when you got there, did you?

A. Door was open.

Further direct:

Q. What was the condition of Rosa's face?

A. Could not see her face, she was covered up with her hair.

Q. Was she lying on her back or on her side when Annie was cutting her with the knife?

A. With the face upward (the way she indicated there).

Q. Did you observe any blood on her face or around her neck?

A. The floor was full of it.

Q. Did you see any blood on Rosa's face?

A. You could not see, the face was covered with her hair.

Q. Did you observe whether there was any blood on Anna Valentina's hands?

A. She had as much on as if she had been killing a pig.

55 The COURT: She had as much blood on her as if she had been killing a pig?

A. Yes, sir.

Further direct:

Q. Did Anna say anything to you when you spoke to her and took the knife out of her hands?

A. I said to her, "Anna, what have you done?" and Anna answered me back, she says, "I know what I have got in my gut—in my stomach."

Q. Did she say anything else?

A. No, sir.

Q. Then she went out, did she?

A. Went downstairs; she opened the pump, the faucet, washed her hands and then went out.

Q. What did you do then?

A. She went out first and I followed her next with the baby in my arms.

Q. Did the baby have blood on it?

A. Hurt the baby's face, hurt from one side to the other.

Q. You say the baby's head was hurt?

A. It was all scratched up from one side to the other.

Q. Did it have any blood on its face?

A. It got black looking like.

Q. And was this the baby that you found on the floor?

A. Yes, sir.

Cross examination by Mr. DEMAREST:

Q. When had you seen Anna that day, before you went to the house and saw Mrs. Salza?

A. I saw her there about four o'clock, and I was to make a fire in the stove.

Q. Where did you see her?

A. She was in front of my house, I was from inside and she was from outside.

Q. Talking with her?

A. Yes, sir.

56 Q. How soon after that was it that you saw her over at Mrs. Salza's place?

A. Right away, it was four o'clock.

Q. Did you see Anna and Mrs. Salza together at all that day before you saw them in the room of her house?

A. They were having trouble the two of them, and she was saying, "Look what that Mrs. was saying from over there," and the other one from up was saying also to me, "Look what that Mrs. says. Look what she say to me."

The COURT: I don't think the jury can understand anything from that. I would like to know whether the witness saw this quarrel, or whether it was between these two women, and if so, where it took place, where the trouble was; you speak of this one down and this one up, and no one knows who it is.

The INTERPRETER: She says, "I was on the inside, I didn't hear anything." (He then interprets as follows, something the witness says: "I only heard Anna Valentina saying, 'Mrs., Mrs.,' but I didn't hear the other, she was too high.")

By the PROSECUTOR:

Q. Who was too high?

A. Rosa.

Q. Where was Anna when she said that?

The COURT: One minute; it is Mr. Demarest's cross-examination. Proceed, Mr. Demarest.

Further cross:

Q. Where was Rosina when Annie said this that you heard?

A. She was opposite to the window.

Q. Of her room, of where she lived?

A. Yes, sir.

Q. Now, did not Anna say to you, do you hear what Mrs. Salza is calling me?

57 The COURT: What is this? I want to hear your opening—

Q. Did not Anna say to this witness, hear what Mrs. Salza is calling me, during the time they stood there?

The COURT: Oh, if it is during the time of the quarrel, that is admissible.

A. Yes, she said this word. I told her to go away home. Told her to go home, to Anna; that the words were like cherries, you pull one and there will come a hundred of them.

Q. Did not you hear Mr. Salza during that quarrel call Anna some bad names out of the window of her house?

A. No; I was inside.

Q. Did not hear at all what Mrs. Salza said?

A. No; did not hear anything what Rosa Salza said.

Q. Did Anna say to you what Mrs. Salza said?

The COURT: One moment. How is that admissible?

Mr. DEMAREST: I withdraw it.

Q. Now, did you notice, after this loud talking that you said you heard between Anna and Mrs. Salza, did you notice where Anna went?

A. I seen her going to her house.

Q. Did you watch her the whole of the time to see whether she went directly home?

A. No.

Q. How do you know, then, that she went home to her house?

A. I seen her; she went by my house and went towards, down there, and I was occupied cooking dinner, and I could not watch where she went to.

Q. When you were taking with Anna in front of your house, did you see whether Anna had anything in her hands, or not?

A. She did not have anything. All she had was the umbrella.

58 By the COURT:

Q. She did have an umbrella, did she?

A. Yes, sir.

Q. Was the umbrella open or shut?

A. Shut.

By Mr. DEMAREST:

Q. You say you saw her go past your house, and for that reason you supposed she was going home. When she went past your house, had she then gone by the house of Mrs. Salza?

A. Yes, sir; she had passed Rosa Salza's house, beyond where she lived.

Q. Now, about how soon after you had had this talk with Anna was it that your little girl came and called for you?

A. It did not elapse; not even a half an hour.

Q. When you went to Mrs. Salza's house did you look around the room to see what else was there besides this baby and Mrs. Salza and the knife you saw on the floor that you took away from Mrs. Salza? I mean the knife you took away from Anna.

A. No.

Redirect examination by the PROSECUTOR:

Q. When you heard this talking between Anna and Rosa, where was Rosa, and where was Anna?

A. Anna was in front of my house; in front of the house, and Rosa was upstairs to her house.

Q. Was Anna on the ground?

A. Yes, sir.

Q. And Rosa was where, upstairs?

A. She was over to her house.

Q. Looking out of a window or out of a door or what?

A. From outside of the window.

Q. Looking out of the window?

A. Yes, sir.

Q. Was this a rainy day, this afternoon?

A. No.

Q. Clear, clear day?

A. Yes, sir.

59 By the COURT:

Q. What time of the day was it you heard this talk between these two women?

A. About three o'clock.

The COURT: Do you want me to examine the child?

The PROSECUTOR: I would like you to examine the child.

ANTOINETTE NORCIA, a little child, was brought up to the Judge's desk, and examined by the Court—without being sworn, through the interpreter, as follows:

By the COURT:

Q. Do you speak English? Can you speak English? Don't understand English, eh?

No response.

Q. Ask her how old she is.

The Interpreter repeats the questions of the Court to the child, and her answers thereto.

A. Seven years—six years.

Q. Do you go to school?

A. No.

Q. You understand English, don't you?

A. No.

Q. You understand when I said, "Do you go to school?" Do you ever go to church?

A. Yes, sir.

Q. When do you go to church?

A. Mamma knows it, I don't know.

Q. Do you go to Sunday School?

A. Yes, sir.

Q. Where do you live?

A. I lived where Rosa lived. I live near by the house of Rosa. It is a two-story house, that is the house where I live.

Q. What town do you live in, or borough—what place?

60 A. America.

Q. Do you know what it is to tell the truth and to tell what is not true?

A. No.

The INTERPRETER: I asked her if she would tell a lie, what would happen to her, and she says, I don't know.

Q. Do you know what becomes of people that are bad?

A. No.

Q. What do they tell you—does your mother tell you where people go when they die?

A. No; she don't tell me anything.

The COURT: The Court is not satisfied that this child is of sufficient age and discretion to understand the nature and solemnity of an oath and therefore thinks she ought not to be sworn as a witness.

STEPHEN NEBEENI, sworn for the State.

Direct examination by the PROSECUTOR:

Q. Stephen, where were you living on the 10th of last March?

A. The same house where I was living before.

Q. What did you say?

A. The same house where I was living before.

Q. Over in Lodi?

A. Yes, sir.

Q. Did you know Rosa Salza?

A. Yes, sir.

Q. Do you know Anna Valentina, the prisoner here?

A. Yes, sir.

Q. How long have you known Anna Valentina?

A. About a month and a half.

Q. A month and a half?

A. Yes, sir.

61 Q. How long have you known Rosa?

A. About two months.

By the Court:

Q. When did you first know them?

A. I first knowed them when they came in 'the brick house.

Q. When was that?

A. That was February.

Q. Last February.

A. Yes, sir.

Q. How old are you, Stephen?

A. May the 6th I will be ten.

Q. Where were you in the afternoon about four o'clock on March the 10th last?

A. I came home from school.

Q. And were you near Rosa's house at that time?

A. Yes, sir.

Q. What were you doing around Rosa's house?

A. I was playing.

Q. Playing with whom?

A. With another fellow.

Q. And what was the other boy's name?

A. Tony Schimon.

Q. Did you see Anna Valentina, the prisoner, then?

A. No, sir.

Q. Did you see her afterwards?

A. Yes, sir.

Q. How near were you to Rosa's house, Rosa Salza's?

A. I could not tell you.

Q. Well, where were you playing?

A. Around my house.

Q. And how far is your house from Rosa's house?

A. It is about half a block.

Q. Well, did you see Rosa?

A. Yes, sir.

Q. Where was she when you saw her?

A. I saw her up by the stove, laying dead.

Q. Did you see her that afternoon, before she was dead?

A. Yes, sir.

62 Q. What time did you see her before she was dead?

A. When I came from school at three o'clock

Q. Three o'clock?

A. Yes, sir.

Q. Whom you came home from school?

A. Yes, sir.

Q. And where did you see her then?

A. I seen her looking through the window?

Q. Which window?

A. The side window.

Q. Upstairs or downstairs?

A. Yes, sir; upstairs.

Q. In her own house?

A. Yes, sir.

Q. Did she have anything in her hands?

A. A little baby—a little girl was standing by her.

Q. What little girl?

A. The little one.

Q. The little girl of Norcia's?

A. Yes, sir.

Q. And what was Rosa doing at that time?

A. She was talking through the window.

Q. She was talking to Anna Valentina, the prisoner?

A. Yes, sir.

Q. And Anna was answering back?

A. Yes, sir.

Q. Where was Anna when Rosa was upstairs talking to her?

A. The next house—by the side of the brick house.

Q. Was Anna in her own house then?

A. Yes, sir; she boarded in another house.

Q. Oh, she was in another house?

A. Yes, sir.

(By the COURT:)

Q. Was Anna in the house or on the street?

A. On the street—talking.

Q. Where was she with reference to the place where you say—where you saw Mrs. Salza—you said you saw Mrs. Salza?

A. Yes, sir.

63 Q. Where was she?

A. She was on the road.

Q. On the road?

A. Yes, sir.

(By a JUROR:)

Q. He is mistaken in the name Rosa.

(By the COURT:)

Q. I say, where was Rosa?

A. Upstairs.

Q. She was upstairs, where?

A. Looking through the window.

Q. Looking through the window of what house?

A. Brick house, three stories.

Q. How high was the window from the ground?

A. About three stories.

Q. Now, where was Anna at that time?

A. Anna was right across on the other side.

Q. Across the street, do you mean?

A. Yes, sir.

Q. Where was Anna standing?

A. Standing right under the window.

Q. Under what window?

A. Under Mrs. Norcia's window.

Q. Was Anna on the sidewalk or in the yard, or what?

A. On the sidewalk.

Q. Now what happened; what took place?

(By the PROSECUTOR:)

Q. What was Anna saying to Rosa?

A. I didn't hear what Anna said, but Rosa was talking.

Q. What was Rosa saying to Anna?

A. I could not say; they were talking in Italian.

Q. How long did they talk in that way?

A. About half an hour.

Q. Then what did Anna do?

A. Anna went home, and went back again and folded her hands like that (illustrating).

Q. Anna went home?

A. Yes, sir; and then came back with her hands folded like that.

64 Q. How long was it before she came back?

A. About five minutes. She went home and then came back again.

Q. Then where did Anna go?

A. Upstairs.

Q. Upstairs where?

A. Within Rosa's house.

Q. Did you see that, my boy?

A. Yes, sir.

Q. You saw her do that?

A. Yes, sir.

Q. How long did she stay up in Rosa's house before you saw her again?

A. I could not tell you.

Q. Did you stay there all the time?

A. Yes, sir; I was outside, and I heard some one screaming for about three minutes.

Q. You were outside and heard somebody screaming in about three minutes?

A. Yes, sir.

Q. Where was the screaming coming from?

A. From the brick house.

Q. From Rosa's house?

A. Yes, sir.

Q. From what part of Rosa's house did you hear the screaming coming?

A. From the side window that was open.

Q. Where Rosa had been sitting with the girl before?

A. Yes, sir.

Q. How long did this screaming continue?

A. About three minutes.

Q. Then what did you do?

A. I started to run by the steps and my toe caught, and I stopped by the steps and didn't get no further.

Q. Then what did you do, my boy?

A. Then I went up by the steps until I stepped off and I went and run up by the steps, and I stopped and I heard a little girl holloa, Mamma, Mamma, Mamma."

65 Q. Which little girl was it?

A. That little girl over there.

Q. That was up here before the Judge?

A. Yes, sir.

(By the COURT:)

Q. The little Norcia girl?

A. Yes, sir.

(By the PROSECUTOR:)

Q. Then what did you do?

A. Then I run up there, right upstairs.

Q. After the little girl came out of the house holloaing "Mamma, Mamma," what did you do then?

A. I was standing by the steps, and then her mamma came up the steps and I heard her holloaing.

Q. Then the mamma of the little girl came?

A. Yes, sir; and she run upstairs.

Q. And she went upstairs?

A. Yes, sir.

Q. Then what did you hear?

A. I heard her holloaing "Madonna mea, Madonna mea, Madonna, mea."

Q. Then did you run upstairs?

A. Yes; I only seen her running on the ground, and I stopped running.

Q. Then you ran upstairs and saw who laying on the floor?

A. Rosa.

Q. Where was Anna at this time, the defendant?

A. Anna was downstairs.

Q. Anna had come downstairs?

A. Yes, sir.

Q. Did Anna come out of the house before you went up?

A. Yes, sir.

Q. Did you see her come out of the house?

A. Yes, sir.

Q. Did she have anything in her hands?

A. She had blood on her hands, and a little bit on her face.

Q. This is the woman you saw come out of the house (pointing to the defendant).

66 A. Yes, sir.

Q. Did you see where she went—Anna?

A. Yes, sir; she went to her own house, where she boarded.

Q. What kind of clothes—did she have anything on over her dress?

A. She only had her apron. She wiped her hand off on her face.

Q. On what?

A. On her apron and then she took and knocked it away.

Q. Did she take her apron off?

A. Yes, sir.

Q. Where did she throw her apron?

A. Behind her house.

Q. Then where did Anna go?

A. Anna went home and got the bundle.

Q. Did you see that?

A. Yes, sir; I started to run and saw her by the car—waiting for the car.

Q. So Anna run home and got some things?

A. Yes, sir.

Q. Did she have a bundle in her hands when she came out?

A. Yes, sir; a parcel and cape and shawl on her arms; yes, sir.

Q. You was waiting by the car?

A. Yes, sir.

Q. How far from the trolley track?

A. About four feet.

Q. About four feet?

A. Yes, sir.

Q. Did you see where she went after that?

A. No, sir. She says, like this, "I will kill you too, if you don't go back." And I started to run and scream.

(By the COURT:)

Q. Who did she say that to?

A. To me.

(By the PROSECUTOR:)

Q. She said to you if you didn't go back she would kill you?

67 A. Yes, sir.

Q. Where were you going?

A. I was going for Jim Cole.

Q. Who is Jim Cole?

A. Policeman.

Q. The marshal?

A. Yes, sir.

Q. Then did you go back when she told you that?

A. Yes, sir; I started and went home.

Q. You say you saw Rosa lying on the floor, did you?

A. Yes, sir.

Q. And where was the baby?

A. The baby was by her feet.

Q. Did you see the baby there?

A. Yes, sir; and then the lady took her up and I started to run down.

Q. What lady picked her up?

A. That lady over there.

Q. Mrs. Norcia?

A. Yes, sir.

Q. Mrs. Norcia picked up the baby?

A. Yes, sir. And I was on the steps right down by the house there.

Q. Did you notice the door when you went upstairs?

A. No, sir; I didn't see no door.

Cross-examination by Mr. DEMAREST:

Q. When you saw Anna come back from here home, before she went upstairs and was waving her hands like that, did you see anything in her hands at all?

A. No, sir.

Q. Did you notice her hands?

A. Yes, sir; she was going like that.

Q. Are you sure she had nothing in her hands at all?

A. No, sir; she had nothing in her hands.

(By the COURT:)

Q. Did she have any umbrella?

A. No, sir; she didn't have nothing, but she was coming downstairs and then was coming down running and wiping her hands off.

68 Q. Did she have an umbrella in her hands when you heard her talking with Anna?

A. Yes, sir.

Q. What did she have in her hand?

A. A shawl and a cape and an umbrella.

Q. I am talking about 3 o'clock, before she went upstairs.

A. Yes, sir.

Q. Now, you say she and this Rosa was here talking, how long?

A. About half an hour.

Q. And then Anna went where?

A. Anna went home, and then she came back again?

Q. How soon did she come back after she went home?

A. She went over and took five minutes and come right back again.

Q. What did she have with her when she went over towards home that she did not have when she came back?

A. She had an umbrella when she went home and a cape and shawl, and then came back with no cape or shawl, or nothing.

Q. Did she have a hat on?

A. No, sir.

Q. When she came back did she say anything?

A. No, sir.

Q. Did she say anything before she went upstairs in the brick house?

A. No, sir.

Q. Did she look up before she went upstairs?

A. Yes, sir.

Q. Up where?

A. Through the window.

Q. Was anybody up there?

A. Yes, the little girl.

Q. How do you know the little girl was up there?

A. I seen her.

Q. Where?

A. Looking through the window.

69 Q. You saw there when you were on the street, you could see the little girl up in the window of the third story.

A. Yes, sir.

Q. Was Rosa up there?

A. No, sir; I seen Rosa a running.

Q. Saw Rosa running?

A. Yes, sir; up to the door.

Q. When did you see her run?

A. When I was looking.

Q. Where was Anna Valentina when you seen Rosa running to the door?

A. Anna Valentina was down by the steps where I was standing.

Q. What was she doing?

A. Walking up.

Q. Walking up where?

A. Up the steps.

Q. And you say at that time you saw Rosa going to do what to the door?

A. Lock it.

Q. How did you say she locked it?

A. Well, the little girl told me.

The COURT: We must not have that—strike that out.

Q. Did you see Rosa in the window at the time Anna Valentina came back from her house?

A. Yes, sir.

Q. What was Rosa doing?

A. Looking; and then gave the little baby to the girl and then started running.

Q. Running where?

A. By the door.

Q. But you could not see whether she locked the door?

A. No, sir.

Q. You say Anna Valentina did not say anything when she came back to the house?

A. No, sir.

70 Q. Did Rosa say anything to her out of the window when Anna came back to the house?

A. No, sir.

The PROSECUTOR: I offer that door and the knife and this lock, and that other piece of wood, your Honor.

The COURT: Do you object to that?

Mr. DEMAREST: No, sir.

GAETANO SALZA, sworn through the interpreter, on behalf of the State, testifies as follows:

Direct examination by the PROSECUTOR:

Q. Salza, where were you living on the 10th of March last?

A. In the house of Mike Calucci.

Q. Where?

A. Lodi.

Q. In this county?

A. Yes, sir.

Q. And what part of the house were you living in?

A. Third floor, in front.

Q. How old a man are you?

A. I don't recollect very well if I am 21 or 22.

Q. How old is your wife?

A. She told me she was 26 years.

Q. How many children have you?

A. Only them two.

Q. What two?

A. Two twins.

Q. Twins?

A. Twins.

Q. How old were they?

A. Three months or three months and a half.

Q. That is, at the present time, is it?

A. Till the time the trouble occurred.

71 (By the COURT:)

Q. They were three and a half months old at the time of the trouble?

A. Yes, sir.

Further direct:

Q. That was on the 10th of March, was it?

A. Yes, sir.

Q. And what time—how many rooms did you and your family occupy in this house?

A. Three rooms.

Q. And in what story of the house was it?

The COURT: Third story, he says.

Q. And how did you get to the third story, by an outside stairway or inside?

A. Went in to the front door; the way they all of them went in.

Q. What is your business?

A. I work in a factory.

Q. And what time did you go to work that morning?

A. At seven o'clock.

Q. Did you go home at noon for luncheon, or did you go home at noon that day for luncheon?

A. I go home in the evening when I am done with my work.

Q. What time on the 10th day of March did you last see your wife alive, Rosa Salza?

A. In the morning, at seven o'clock.

(By the COURT:)

Q. Was Rosa Salza your wife?

A. We were that way together.

Further direct:

Q. And what time did you next see her?

The INTERPRETER: When do you mean, Mr. Prosecutor.

Q. He says the last time he saw her was at seven o'clock; when did he next see her?

Q. You mean the day, the month?

Q. Yes.

72 A. I saw her at seven o'clock in the morning when I left and then I didn't see her any more.

Q. See her dead?

A. Yes, sir; I seen her dead.

Q. When?

A. Before half past five.

Q. Before four and five o'clock, was it?

A. About from five to five-twenty.

Q. Of the same day?

A. Yes, sir.

Q. How did you happen to go home so early from your work?

A. They came and told me—

The COURT: Never mind what they told him.

Q. He was called there, was he?

The INTERPRETER: Yes, sir; he was called there.

Q. And where was your wife when you came into the house?

A. She was there on the floor, lying down.

Q. Lying down?

A. Lying down on the floor, dead.

Q. And any blood on the floor?

A. Quite a little—much.

Q. What was the condition of the door?

A. The condition of the door was broke, and lying on the floor.

Q. Look at this door and see if it was in that condition when you came in.

A. Can I go near?

The COURT: Certainly.

A. Yes, sir; that is the way the door was, and there was one piece missing, that was on the floor.

Q. I show you a piece of wood and ask if this is the piece of wood that you saw on the floor?

A. Yes, sir; that is ~~the way the door was, and there was one piece~~ missing, that was on the floor.

73 Q. I show you a piece of wood and ask if this is the piece of wood you saw on the floor?

A. Yes, sir.

Q. Did you see the lock?

A. Yes, sir.

Q. Is that the lock?

A. Yes, sir.

Q. Was that broken like that?

A. Yes, sir; it was broken that way.

Q. This is the door that was on your house?

A. Yes, sir.

Q. I show you a knife and ask you if you saw that knife there?

A. That is the knife.

Q. Did you see that knife there?

A. When I came there I saw that knife lying on the floor.

Q. Had you ever seen that knife before?

A. No, sir.

Q. Did that knife belong in your house?

A. No, sir; we never had such knives as that.

By the COURT:

Q. Was the door broken in that way when you left in the morning?

A. No, sir.

Cross-examination by Mr. DEMAREST:

Q. Did you have any knives in your house at all?

A. We had a table knife; one without a point, with a round point on, and a small one to cut bread with.

Q. Didn't you have a knife something like that in your house?

A. No, sir.

JUSTICE MAZNAN sworn as interpreter.

FRANCIS PRZUBULOSOOSKA, sworn through the interpreter on behalf of the state, testified as follows:

74 Direct examination by the PROSECUTOR:

Q. Where do you live?

A. Lodi.

Q. And were you living there the 10th of last March?

A. Yes, sir.

Q. Did you know Anna Valentina, this defendant?

A. Yes.

Q. Did you see Anna Valentina on the 10th of last March, in Lodi?

A. Yes, sir.

- Q. What time of day did you see her?
A. At half past four.
Q. Where was she when you saw her at half past four?
A. Across the street at Lodi.
Q. Where were you?
A. I was in my house upstairs.
Q. In your own house?
A. Yes, sir.
Q. Upstairs?
A. Yes, sir.
Q. What was Anna Valentina doing when you saw her—where was Anna Valentina, the defendant?
A. Anna Valentina passed the sidewalk at half-past four.
Q. Where were you when Anna Valentina passed on the sidewalk?
A. I was upstairs in my house.
Q. Were you looking out of the window?
A. I looked out of the window when she passed.
Q. What did you say to Anna Valentina, if anything?
A. I asked where she had been so long.
Q. What did she say to you?
A. I asked her where she had been so long, and she said that she had been working plenty in a house; Anna Valentina said something else, but in Italian, broken, that I did not understand.
- 75 Q. Did she have anything in her hands or in her arms at that time?
A. I did not see anything, but everything was clean.
Q. Did she have anything in her arms, bundles—
A. Nothing at all.
Q. How long did she talk with you?
A. She did not talk but a very few words for an hour's time for a policeman.
Q. Who called for a policeman; you say that you were talking with Anna Valentina; were you, for a little while you talked with Anna Valentina?
A. There came a wagon and there came a car at half-past five, and there was a policeman, and he asked me if I had seen an Italian lady.
Q. After you got through talking with Anna Valentina, where did she go?
A. After she got through, she went out in the road.
Q. Did you see her after that?

No cross-examination.

W. V. A. BLAUVELT, sworn on behalf of the State, testified as follows:

Direct examination by the PROSECUTOR:

Q. You are the Deputy Sheriff here?

A. Yes, sir.

Q. And were on the 10th of March last also?

A. Yes, sir.

Q. Do you recognize the defendant here in this case, Anna Valentina?

A. Yes, sir.

Q. Did you see her on the 10th of March last?

A. Yes, sir.

Q. Where and when?

A. She came in the office about half past five.

Q. You were in charge of the jail at that time?

76 A. Yes, sir; I was in the Sheriff's office, and she said, "Lock me up, troub." I was telephoning at the time, and I said, "Wait until I get through;" when I got through I said, "What is the matter, Anna?" and she said, "Me troub., me cut."

Q. You had known her before?

A. Yes, sir; and I tried to find out from her whom she had cut, but she would not tell me, and I said, "Have you and Mike had trouble again?" and she said, "No, me troub." I talked with her awhile, and she said, "Lock me up," and I said, "No, I cannot do that; I have not anything to lock you up on;" and I called to one of the colored men downstairs and sent for a Justice of the Peace to lock her up until we could find out, and in the meantime Mr. Holmes telephoned from Lodi, and I detained her after that telephone message came.

CORONER MORGAN re-called.

Direct examination by the PROSECUTOR:

Q. Do you remember having an interview with the defendant, Anna Valentina, in July, here?

A. Yes, sir.

Q. Did you have at that time an interpreter with you?

A. Yes, sir.

Q. Who?

A. Lewis Bunocuro.

Q. Have you had a conversation with her in the jail through the interpreter?

A. Yes, sir.

Q. You may state—

The COURT: The woman spoke in Italian, I suppose, and you spoke in English?

A. Yes, sir.

77 The COURT: That not being a judicial proceeding, I don't know that we can assume that the conversation is correctly interpreted; the interpreter would seem to be the man who knew what Anna Valentina said.

Further direct:

Q. By the way, Coroner, during the recess, just recently, where were you sitting?

A. Right in the chair there.

Q. Did you have a conversation with her?

A. She spoke to me while I was sitting there.

Q. What did she say to you?

(By the COURT:)

Q. Did she speak to you in English?

A. Yes, sir.

Q. Do you mean to say, that it is since the commencement of this trial, during the recess?

A. Yes, sir.

Mr. DEMAREST: That is not proper, it seems to me.

The COURT: You many inquire whether the statement was made voluntarily.

(By the COURT:)

Q. Did she speak voluntarily, of her own accord?

A. Yes, sir; in the presence of another witness.

Q. Had you suggested that she talk to you?

A. No, sir.

Q. Did anyone else suggest to her to talk, or did any one hold out any inducements to her to get her to talk, or did anyone threaten her in any way, or intimate to her that it would be well for her to talk?

A. No, sir.

Mr. DEMAREST: I don't see that there is any legal objection to it, but it seems to me that it is a peculiar proceeding.

The COURT: I don't know how we can avoid receiving the truth in evidence, even though it occurs during the trial; a statement voluntarily made by the defendant, having any bearing on the charge, is evidential against her.

78 Mr. DEMAREST: I withdraw the objection.

Further direct:

Q. What did she say to you?

A. As I sat in the chair she looked around at me in presence of one of the marshals, and she says, "Pretty soon me die. I don't care."

Q. Was there anything else she said?

A. No, sir; that is all.

Cross-examination by Mr. DEMAREST:

Q. You were here when she was arraigned in court, were you not, Coroner?

A. No, sir.

State rests.

Mr. DEMAREST opened for the defence as follows:

If the Court please, and gentleman of the jury; Standing as I do in behalf of the defendant in this matter, I realize that I am placed in a very peculiar position. This defendant, when arraigned in open court, made confession of the commission of this crime, and you, gentlemen of the jury, from the evidence that has been produced on the part of the State, and that which shall be offered on the part of the defence, will simply have to determine what the degree of guilt shall be; your verdict will be either that she is guilty of the taking of the life of this woman, Mrs. Salza, with malice aforethought, premeditated, which would mean a verdict of murder in the first degree, or your verdict will be murder in the second degree; so that I find myself in a very peculiar position. It is one of those cases around which—the circumstances being such—that we stand, as it were, with only the defendant to testify. After you have heard

her testimony, and possibly one or two witnesses in connection therewith, the case will then be given to you for you to determine whether this woman shall forfeit her life for the act which she committed on March 10th, last, or whether she shall suffer the penalty which the law will inflict by reason of a verdict of murder in the second degree.

ANNA VALENTINA, the defendant, being duly sworn, through the interpreter, in her own behalf testified as follows:

Direct examination by Mr. DEMAREST:

Q. Anna, how long have you been in this country?

A. It will be ten years on the 16th day of April.

Q. Where have you lived during that time?

A. I lived seven months over in New York, and I lived over at Croton four years; and I think it is about five years am living over in Lodi.

Q. Did you know Rosina Salza in her lifetime?

A. I only knew her three months in our yard.

Q. Do you know Mike Calucci?

A. After twenty-seven days I was here in America I knew Mike Calucci?

Q. Did Mike Calucci bear any relation to you?

A. I was with him like a servant; but he abused me.

Q. Where did you live with him?

A. All the time together.

Q. Where?

A. At Croton Dam, New York, and Lodi.

Q. How long and up to what time did you live with him?

A. Over eight years it is, sure; but there has been some trouble of law up to the Court at Hackensack, as you know already.

Q. Well, did you stop living with him then?

A. It was about at the disturbance. I have lost my money, and Mike Calucci is the boss, and I ain't any more.

80 Q. Well, how did you lose your money through Mike Calucci?

The COURT: Wait a moment.

Mr. DEMAREST: I will withdraw the question.

The PROSECUTOR: If your Honor please, I would like to have that permitted; I am somewhat familiar with the circumstances, and I think it will turn out to be *revelent*. Perhaps it may appear to the Court as irrelevant at the present time, but it will turn out in this view, as I understand, somewhat relevant. I can explain to the Court. (The prosecutor confers with the Court.)

The COURT: I do not see how it is at all relevant; the transaction is so long ago between this woman and a man with whom she then sustained a relation, that I do not see what bearing it has on the murder of this Salza woman on the 10th day of March last.

Mr. DEMAREST: I understand they separated this year, as I understand.

The COURT: Well, supposing they did, her separation from this man has no bearing, so far as yet appears, upon the relations between this woman and the Salza woman.

Mr. DEMAREST: Only as the ground of this quarrel, which occurred, as we shall claim, between these two women.

The COURT: Let us see what the quarrel was. The justice of the quarrel is a matter that may or may not be relevant, and what connection the Salza woman had with the original cause of the quarrel may or may not be made to appear. It does not appear as yet that there was any quarrel. The Court cannot admit it at the present state of proofs. It seems to be quite remote.

81 Q. Where were you on the morning, March 10th, this year?

A. In the house of the boss, of Mike, which she gave me to eat.

Q. I don't understand that; where was she on the morning of the 10th of March, this year?

A. Was in the house.

Q. Whose house?

A. In the house of Concetta.

Q. What were you doing there?

A. I was doing the housework and taking care of the children, and she would feed me for that, and whenever I found a day's work, I would go out for it and do it.

Q. Did you live there at this Concetta house?

A. Yes, sir.

Q. How long had you lived there?

A. The time I came back from Roselle Park.

Q. When was that?

A. After Christmas; I don't recollect.

Q. Did you go out of the house of Concetta that day; if so, at what time?

A. I could not be certain, but it must have been either eight or nine o'clock.

Q. In the morning?

A. Yes, sir.

Q. Where did you go?

A. A German got confined and sent for me to work.

Q. Where was that where you went?

A. It is alongside of Michael Calucci's.

Q. Alongside of the house where Mrs. Salza lives?

A. Alongside the house of mine which was at one time.

Q. Did you see Mrs. Salza that morning?

A. I saw her about three o'clock through the blinds.

Q. The question is, did you see her that morning at all?

A. No.

Q. What time did you go home to your boarding-house from this place where you did work that day?

82 A. I could not say; it was half-past four or five; I would not like to put my conscience in between.

Q. Where were you when you saw Mrs. Salza at three o'clock that day?

A. I was in the house of the German lady right in front there.

Q. Was that before you were talking with Mrs. Norgia?

A. I don't know who this Norgia is. (Norgia is requested to stand up.) The daughter was there, three daughters, they were there.

Q. Now, the time you saw Mrs. Salza at her window, was that before you saw those women?

A. Before I ever saw them women.

Q. Now, what occurred; did anything occur between you and the Mrs. Salza at that time?

A. No; they only were making the fun of me from the window, the three of them.

Q. Who, what three?

A. The daughters of this here woman and Rosina Salza.

Q. Were they all together at the time?

A. Rosa Salza was in the centre, and one of the daughters was on one side of Rosa and the other one was on the other side.

Q. Now, what were they saying, if anything, that you heard?

The COURT: Where was Rosina at this time?

Q. Where was Rosina, on the street or upstairs in the house, when you saw her?

A. They were at the window of the kitchen facing ours.

Q. In whose house?

A. In the house of Mike Calucci.

The COURT: The brick house?

A. Yes, sir.

Q. Third story window?

A. Top floor.

83 Further direct:

Q. Now, what were they saying, what was Rosa saying?

A. All she say was, as she indicate with her hands, she wasn't saying anything with her mouth.

Q. Did you say anything to her?

A. You know that the American people are quiet.

Q. Did you say anything to her at that time?

A. No; I didn't say anything, not at all.

Q. How long did you stand there watching her?

A. One which is washing all the day, I could not stand there and watch them all the time.

Q. Well, did you see her after that again, that same day?

A. When I was going home after I was done with my work.

Q. Where were you when you saw her?

A. I was walking, going towards my house.

Q. Where was Rosina?

A. I didn't even turn my head back.

Q. Well, did you hear her say anything?

A. She was saying to me so many bad words.

Q. What words was she saying?

A. Called me a hog, a pig, rather, and called me a slouch, and called me that I was having connection with a man by the name of Polluchi, and when that woman called me them I heard it all.

Q. Did you say anything to her?

A. No, sir; I didn't say anything; if I got to die, if I am here this minute I won't be here next; my conscience is clear.

Q. Did you say anything to the Norgia woman about what Mrs. Salza was saying?

A. The woman called me as she indicate, they were all one gang before, they were all together, and then they were downstairs together. Rosa was expressing herself from the window to her.

The COURT: You mean, said to witness—"to me" not "to her."

84 The INTERPRETER: Yes, to me. Said "you arse-wiper, and arseholer." And so many other words which I think very impudent to put before the court, except the court wants all that I shall translate them all.

Q. Let us have just what they said.

A. All the bad words as you know; she called me in Italian language, as you can express.

The COURT: You mean the witness says the woman Salza used all the bad words that the witness knows in Italian.

The INTERPRETER: What the witness says I translate, and she was going to give me more when I made application to the court.

Q. Can you give us those other words that were used there?

A. She touched me on the honor; I may be a whore, but while I was with Mike I never went back on him.

Q. What Rosina said, that is what I want?

A. She said I was going around licking plates of the people, and picking up dirt all over; a dirty whore, going round whoring and washing dishes.

Q. Now, how long did that sort of thing keep up there?

A. Ten or twelve minutes.

Q. What did you do then after that? Did she stop talking finally?

A. I said to that woman, to see what she says, tomorrow I am going to court about it.

The COURT: Repeat that so we can understand it.

The INTERPRETER: The witness said, your Honor, she pointed out to that witness which was on the stand here that were there at the time, and she says, now you hear what she saying to me, and tomorrow I am going to court about what she called me names.

85 Q. What did you do next?

A. I went and took the road to the way home.

Q. How far was the house where you lived from where Rosina lived?

A. About two blocks.

Q. What did you do after you got home?

A. A man call me; told me the boss from Roselle Park wanted me on the next day to go up there to work for him.

Q. Well, what did you do?

A. I was standing in the street when he told me.

Q. Was that before you arrived home?

A. Yes, sir; I did not arrive at home.

Q. What did you do then after he told you that?

A. I said, "Well, I am getting done over here for the German woman, and then I will go there;" I was to be there about two weeks.

Q. Well, did you go on home then?

A. Just I went in and out.

Q. What did you go in for?

A. I wanted to leave the things there.

Q. Where did you go? Did you get anything when you went in the house?

A. The door was locked, the door of the house was not the house of mine.

Q. Is that the house where you boarded?

A. Yes, sir.

Q. Well, didn't you go in the house at all then?

A. The father and mother of them children worked, and being the children have the key around their neck with a string, they must have been out for they were not there.

Q. Where did you go then; what did you do next?

A. I looked toward the house, and I was looking for the children, and this Rosa Salza called to me.

Q. What did she say to you?

A. She motioned as she (the witness) said, I was quite a ways from there.

Q. What did you do then?

86 A. Being one night she sent her husband over to my house to bother me, to excite me; being that I didn't want any trouble in the house where I was, I went up there, perhaps she wanted to settle things up.

Q. Well, did you go up to her house?

A. Yes, I went up there.

Q. Did you have anything with you when you went up to the house?

A. I walked that way—as she indicates. (Witness stands up, passes her hands over her person, and spread her hands.)

Q. After you got to the house, then what?

A. When I got up there I asked her, "Why you are doing all those faults to me, Rosa?"

The COURT: Wrongs, I suppose.

The INTERPRETER: Wrongs.

Q. Where was Rosa and where were you when you said that to Rosa?

A. Was in her house.

Q. In her house?

A. In her house.

(By the PROSECUTOR:)

Q. In whose house?

A. In the house of Rosa, yes, sir; the house of Rosa.

Further direct:

Q. Where were you?

A. I was in the house of Rosa.

Q. Now, how did you happen to go in Rosa's house that day?

A. Because she called me, and I thought perhaps she wanted to make friends, so I would not have any trouble.

Q. How did you get into her house?

A. She opened the door.

Q. Who opened the door?

A. I knocked on the door and she opened it, and I went in, the style of America; you knock on the door.

Q. Was that the door there which is in court?

A. Why, I built that house; you mean to say that I don't know the door and the keys of it?

87 Q. Well, is that the door, the door was this one?

A. Yes, sir.

Q. Did you break that door that way?

A. You ask that woman which she swear against me, and she will tell you if I did anything of my hands.

Q. I ask you if you broke that door when you went in there?

A. I got to die, if not this minute, another one, but I didn't break the door.

Q. When you went in the door, where was Rosa when you got inside of the door?

A. She was nearby the door; she had a baby in one arm (as the way the witness was indicating there).

Q. Then what did you say to her?

A. I said to her, "Rosa, don't call me all those bad names, because if it is not today, it may be tomorrow, that I am going to get with Mike again."

Q. Well, what did Rosa say then?

A. "I have got to break your face, and when my husband comes home to-night, I will have to do a good many more things to you."

Q. Did Rosa do anything then?

A. I told her if she wants to raise any trouble—I told her to put the child away, and she had the knife in her hand, right behind her dress (as the witness indicates there) and when I seen that she had the knife, and I seen she was going to stab me and I takes—to grab her by the hair, and before she stabbed me, I took the knife away from her and stabbed her.

Q. Did she try to stab you that night, before you stabbed her?

A. Why, she had the knife—that way (as indicated) behind her dress, and her baby she had on her arm (as the witness indicated there).

Q. So you took the knife away from her then?

A. Yes, sir.

Q. Is that the knife?

A. I do not recollect if that is the knife, but I killed her with a knife similar to that one, the same length.

88 Further direct:

Q. Did you have that knife, or any knife like that when you went in Rafael's house that day?

A. No, sir.

Q. Did you ever have a knife like that?

A. Never, I swear to it, I confessed myself, and the confession is as high as God.

Q. Did you have anything in your hands that day when you went in Rafael's house?

A. No, sir; I have got to die, and I didn't have anything.

Cross-examination by Mr. KOESTER:

Q. Mrs. Valentina, do you know how that door got broken?

A. No.

Q. Do you remember seeing Mr. Buonocore and the Coroner and myself in jail the next day after you came over here?

A. Yes, sir; I saw you.

Q. Do you remember me asking you how the door was broken?

A. She was opening, and I was going in.

Q. Wasn't it this way: Wasn't Rosa trying to hold the door shut and wasn't you trying to open it?

A. She was there inside, and I was there outside.

Q. And you were pushing the door in, were you not, Anna?

A. She was on the inside, and I was on the outside.

Q. And the door got broken before you got in, didn't it?

A. No, sir.

Q. Didn't that piece break off the door before you got in?

A. No, sir.

Q. Do you recall seeing the Coroner and Buonocore and me in the jail the day after you came here, do you?

A. Yes, sir.

89 Q. Do you remember me telling you before we had any conversation, to be careful what you told me, for if you said anything I might use it against you; do you remember me telling you that?

A. And I said, "When you want to give me the chair, you can give it to me right away."

Q. The electric chair? Is that what she means?

A. I mean the electric chair, because I came and gave up myself.

Q. That is not responsive to my question. Anna, how did that lock get broken?

The COURT: What is the use of spending time on that.

Q. When you got inside, do you say that Rosa had a knife in one hand, like this one that I now show you, and a baby in the other?

A. Yes, sir.

Q. How old was the baby?

A. I don't think they were four or five months, because we were nearby neighbors

Q. How many times did you cut her?

A. A veil fell in front of my eye and she either killed me or I killed her; but I am sure my conscience is here that I have killed her.

Q. How did you happen to go up to her house?

A. She called me.

Q. She had been calling you bad names before this, though?

The COURT: This is a matter of argument; the woman is not bringing out any additional details. If you are going to make an effort to close the case, why do you go into that? There is one question that I should like to have asked, and that is whether Anna Valentina had any cuts on her hands when she got out of this room, and if so, whether she showed them to anyone.

90 Q. (Further.) Did you have any cuts in your hands, Anna?

A. You saw me the next day in the jail, and I did not have any cuts on my hands.

ADELAIDE GRAZIZI, sworn through the interpreter.
Witness withdrawn.

CONGETTA RE, sworn through the interpreter in behalf of defense, testified as follows:

Direct examination by Mr. DEMAREST:

Q. I think this witness probably understands English a little, so I will ask the questions in English and see how we get on. Where do you live?

A. Lodi.

Q. Do you know Anna Valentina?

A. Yes, sir.

Q. How long have you known her?

A. About five years.

Q. Do you know whether she lived over in Lodi last March, and where?

A. At my house.

Q. Did she board with you?

A. Yes, sir.

Q. How long has she boarded with you?

A. Two months.

Q. Was she home every day, or was she out working, which?

A. Some days she had some ladies that she called on for wash.

Q. Did she eat at your table?

A. Yes, sir.

Q. Did you ever have anything of that kind at your house?

91 A. No, sir.

Mr. KOSTER: Objected to.

The COURT: This defendant was an inmate of the household of this witness; I think it is admissible to negative the fact that there was such a knife in the house. Proceed.

Q. Look at -his knife; did you ever see that knife before?

A. No, sir.

No cross examination.

Defense rests.

In Rebuttal.

LOUIS BUONOCORE, sworn for the State in rebuttal, testified as follows:

Direct examination by the PROSECUTOR:

Q. Mr. Buonocore, do you remember going into the jail in company with the Coroner and myself?

A. Yes, sir.

Q. And calling on the defendant?

A. Yes, sir.

Q. Do you remember what was said to her in the first place, before we had any conversation with her?

A. Yes, sir.

Q. What was said?

A. You asked me to ask the defendant here at the bar, if she says

anything at all in her respect, that you would bring it up against her, if it was necessary.

By the COURT:

Q. Did you say that to her?

A. I told that to her, your Honor.

By the PROSECUTOR:

Q. Then, do you remember whether I asked her if she wanted to tell me anything?

A. Yes, sir.

Q. What did I say to her then; how many times did I caution her before I asked her any questions?

The COURT: What is the point of view?

92 The PROSECUTOR: The point of view is to show the confession she made in regard to this door, and this lock.

The COURT: Now, the witness Anna, the defendant, as I understand, admitted that she made a voluntary statement. She admitted that she was cautioned, as you have now explained. She admitted that she said something to you. Her statement in respect to what she said to you about the door was mixed—I don't know as I could say what she testified. You have, I think, the right of contradiction in respect to the door. Now, the point is, to find from this witness what she said in the interview in respect to the door.

Q. What did I ask her about the door and about getting into the room of Rosa Salza?

A. You asked, through me, if she broke that door, or not, and the answer was that Rosa was on the inside trying to push the door towards the outside, after Rosa had called her upstairs, and she was trying to push the door towards the inside to see what Rosa wanted.

Q. And what did she say about the door becoming broken then?

A. And, being pushed one to the other, the door got broken.

Testimony closed.

Recess until Thursday, April 14th, at 9.30 A. M.

THURSDAY, April 14th, A. D. 1904.

Trial continued. Counsel for the defendant and the Prosecutor of the Pleas made their closing arguments to the jury, no verbatim report of which was made. Counsel for the defendant in his argument conceded that the evidence showed the defendant to be guilty of murder in the second degree, but insisted that she should not be found guilty of murder in the first degree.

93

Charge to the Jury.

GENTLEMEN OF THE JURY: Anna Valentina, the prisoner at the bar, is charged with the wilful, deliberate and premeditated murder of Rosa Salza, on the tenth day of March last, at the Borough of Lodi, in this county. It is not disputed; indeed, it is admitted by the defendant, that on the day and at the place in question Rosa

Salza came to her death as the result of numerous knife wounds, stabs and cuts inflicted upon her body by the defendant. The evidence on all hands renders this clear. Moreover, it is admitted and is equally clear from the evidence, even aside from the defendant's admission, that the wounds which she inflicted upon Rosa Salza were voluntarily and intentionally inflicted.

There is no evidence in the case from which you have any right to infer that the defendant was not mentally responsible for her acts. Neither is there any evidence to show that the defendant killed Rosa Salza in her necessary self-defence. It is true the defendant testifies that when she entered Rosa's room, Rosa said something indicating an intent to attack the defendant, and that Rosa had the knife in her hand at the time; but the defendant does not testify that Rosa did attack her, either with the knife or otherwise. On the contrary, she says that Rosa had her infant babe in her arms at the time; and it is not pretended by the defendant that she made the least effort to avoid attack, if attack were threatened or expected. Therefore, you would not be justified in acquitting the defendant on the ground of self-defence. Neither is there any question of manslaughter in this case. Manslaughter (in the case of a voluntary killing) is defined as the killing of a person upon a sudden transport of passion or heat of blood aroused by reasonable provocation, and without malice. The defendant testifies, that an hour or more before—I am not sure that I am right about the time—the defendant testifies, that some time before the fatal occurrence, while Rosa Salza was standing at the window of her room on the third story,

94 and the defendant was on the ground below, Mrs. Salza made certain offensive and insulting gestures towards her, and addressed insulting and abusive epithets to her. But the law is entirely well established, that mere words or gestures, however insulting or irritating they may be by reason of their abusive, contemptuous or indecent character, do not constitute adequate provocation in the law for such passion or heat of blood as will reduce an intentional homicide from murder to manslaughter. Still further, the killing in this case was committed, according to the undisputed evidence, with a sharp and pointed knife, which is here before you, and which seems to be what is ordinarily called a butcher knife. And it is clear beyond dispute, that where a person stabs or cuts the body of a living human being with such a weapon, with force enough to penetrate the tissues beneath the skin, bloodshed is the inevitable consequence. Now, we have in this State a criminal statute, one section of which declares, that if any person in committing or attempting to commit, any unlawful act against the peace of this State, the probable consequences of which may be bloodshed, shall kill another, he shall be guilty of murder. Under this statute, no provocation, however reasonable, however recent, and no matter what heat of blood may be engendered thereby, no provocation is adequate to mitigate the killing from murder to manslaughter, if the killing be done in a manner and with a weapon that will necessarily produce bloodshed.

From all this, it results, as a necessary conclusion of law upon the

admitted facts in this case, that the defendant is guilty of the crime of murder; and the only question left for your consideration is, whether it is murder in the first degree or murder in the second degree. And so the learned counsel for the defendant frankly and properly stated in his opening and in his closing address before you.

Murder is said to be the unlawful killing of a human being with malice. The term "malice" as here used, may mean some particular grudge or ill will existing in the mind of the prisoner
95 against the deceased. Such a grudge or ill will, for instance, as might result from abusive or insulting words or gestures, that do not constitute adequate provocation in the law for such passion or heat of blood as will reduce the intentional homicide from murder to manslaughter. But the malice that renders an unlawful killing murder, is often, if not usually, implied from the nature and the circumstances of the very act that results in death.

In the law of murder the term malice may mean either an intent to do serious bodily harm to another person without just cause, excuse, or mitigation, or it may mean an intent to take the life of another person without just cause, excuse or mitigation. As I have already remarked, there is in this case no just cause, excuse or mitigation for this killing. And as I have already told you, the voluntary stabbing or cutting of a person with a knife, the necessary consequence of which is bloodshed at least, raises the presumption that there was at least an intent to do serious bodily harm, and that presumption, under our statute, is not to be rebutted by evidence of heated blood. And so the unlawful killing thus accomplished is murder.

Now, the distinguishing feature between murder in the first degree and murder in the second degree is the character of the malice which produces and accompanies the fatal act. If the malice consist in an intent merely to do bodily harm, it is murder in the second degree. If the malice consist in an intent to take the life of the deceased, and that intent is carried into execution wilfully, deliberately and with premeditation, then it is murder in the first degree. In this case, it is admitted, for reasons already mentioned, that the defendant is guilty of murder in the second degree, and that will be your verdict unless the evidence has satisfied you beyond a reasonable doubt, that the defendant intended to take Rosa Salza's life, and that that intent was carried into execution wilfully, deliberately, and with premeditation. The term "wilfully," as here used, means the

96 same as intentionally; the inquiry being, did the defendant intend to take the life of the deceased? The next inquiry is, was the killing done deliberately and with premeditation? These two terms necessarily imply that in order to constitute murder in the first degree, the purpose to kill must precede the killing by some appreciable space of time. But human thought is sometimes very rapid in its operations, and by the terms deliberate and premeditated, the law does not mean that any particular length of time need intervene between the formation of the purpose to kill and its execution. It is not necessary that the deliberation and the premeditation should continue for a day, or an hour, or even for a minute. It is

enough that the design to kill be clearly and fully conceived in the mind and purposely and deliberately executed.

Now, therefore, it is for you to say upon the evidence, whether these elements of murder in the first degree have been established beyond a reasonable doubt. What the law refers to by a reasonable doubt, is such a doubt as would exist, if the jury, after a careful review of all the evidence, rejecting that which they consider unreliable, and retaining that which they consider reliable, and weighing all the facts and the circumstances, finds that its judgment is not convinced. The jury ought not, by reason of the gravity of the cause, to allow their minds to get into any artificial conditions as to the kind of judgment that they should exercise in their review of the evidence. They should exercise their common sense, their sound judgment, as they would apply it to the ordinary affairs of life. In this case, the defendant has offered herself as a witness, and the law makes her a competent witness in her own behalf, notwithstanding her very deep interest in the event of the trial. Her evidence is not to be rejected merely for the reason that she is interested; but her interest in the result may be taken into consideration by you as an important circumstance upon the question of the credibility of her testimony—the question whether she is telling the truth.

97 You should also consider her testimony in the light of the uncontradicted and indisputable circumstances of the case, and in the light of all the facts disclosed by the evidence. As to the occurrence that took place between the defendant and Rosa Salza, the lips of Rosa are closed in death; and so, of course, the defendant's testimony has been given without fear of contradiction from that source. But you should weigh the defendant's evidence according to your best judgment and common sense, fairly and impartially, treating her the same as you would treat any other witness interested in the event of the trial, having regard, of course, to the extent of her interest. One important matter that is in dispute, is whether the knife with which the fatal deed was done was brought by the defendant to the departments of Rosa Salza, or whether it was found by her upon those premises. The defendant denies that she took the knife with her, and denies that on her return to her own home shortly before the fatal occurrence, she entered the house where she lived. Her landlady, Concetta Re, testified that she had no knife of that kind in her house. On the other hand, Gaetano Salza, the husband of the deceased woman, testifies that he had never seen this knife before the fatal occurrence; that the knife did not belong in his house, and that he never had such a knife, or any knife like that in his house; and you will remember that the boy, Stephen Nebesni, testified that after the talking between Rosa and the defendant, the defendant ran home and came back after five minutes; that when she went towards home she had an umbrella and a cape and a shawl, and that she came back without any cape or shawl or anything, and had nothing in her hands. This may throw some light upon the question of the truth of the defendant's story, which is, that she did not enter her home at that visit. At the same time, it tends to show, of course, that she did not have a knife in her hands when she re-

turned to Rosa's house. So, if she carried the knife at all, she must have carried it in her clothing, if Stephen's story is reliable.

98 Upon this question whether the defendant brought the knife with her to Rosa's house there is an admitted circumstance that seems to have an important bearing. The defendant testifies, in substance, that when she entered Rosa's room, Rosa had the knife in her hand, holding it behind her dress, and holding the child in her other arm; and that when the defendant saw Rosa had the knife, she saw Rosa was going to stab her, as she claims; she does not say that Rosa attempted to stab her, but that the defendant grabbed Rosa by the hair, and took the knife away from her and stabbed her. Now, you will remember, that the defendant was asked whether she had any cuts on her hands, and she answered to the Prosecutor, "You saw me the next day in the jail, and I didn't have any cuts on my hands." That is the admitted circumstance to which I have just alluded. Is it probable that the defendant could have secured possession of that knife by taking it from the hand of Rosa, without being to some extent cut herself in the struggle for possession of the knife?

Of course, even if you believe that the defendant did not herself take the knife to Rosa's house, it is possible that she found the knife lying on the table in Rosa's room, and seized it and attacked Rosa with it. The question after all is, whether, when she assaulted Rosa with the knife, as she admitted doing, and delivered the blows upon Rosa with the knife, she intended merely to do bodily harm, or whether she intended to take Rosa's life, and carried that purpose into execution deliberately and with premeditation, such as I have defined.

And here we meet with another important circumstance that tends strongly to contradict the whole story of the defendant as to the motive with which she entered Rosa's apartments. That circumstance is the broken condition of the door of the apartment and the lock of the door, that are produced here in evidence before you. The defendant says, in substance, that on her return from her home towards

99 Rosa's house—which, as I understand, was some time after the talk that took place between the parties—she saw Rosa standing in her window, and that Rosa motioned or beckoned her to come up, and that she, the defendant, went up there for an amicable purpose,—to make peace with Rosa. Now, in the first place, is that probable; is it probable that the defendant, so soon after having been publicly insulted by Rosa, should have gone out of her way to visit the apartment of Rosa, with peace in her heart, upon being merely beckoned by Rosa to come? The defendant's story in this respect seems quite inconsistent with the testimony of the boy Stephen Nebesni. He testifies, that when the defendant, Anna, came back to Rosa's house and went upstairs, he looked up and saw through the window the little Norgia girl looking through the window, and saw Rosa up there running towards the door; that Anna Valentina at this time was walking up the steps where Stephen was standing, and that he saw Rosa looking, and then saw her give the little baby to the little girl, and then start for the door. The defend-

ant Valentina testified, that when she got to the door of Rosa's kitchen she knocked on the door and Rosa opened it and she went in; but on cross-examination she was asked whether Rosa was not trying to hold the door shut, and whether she was not trying to open it; and she did not at this time deny this, but said "she was there inside, and I was outside. The Court Interpreter, Buonocore, testifies that in the statement made by the prisoner to the Prosecutor shortly after her arrest, said that Rosa was on the inside trying to push the door towards the outside, and that she, the prisoner, was trying to push the door towards the inside, to see what Rosa wanted, and that thus the door got broken. But the important circumstance is the condition of the door itself. Gaetano Salza testifies, that the door was not broken in that way when he left the house in the morning. Coroner Morgan, James Cole, the Marshal, and Andrew Kerr, the Recorder, all testify, as I recall it, that upon their entering the premises shortly

100 after the fatal occurrence, they found this door broken as you see it, with the mortise lock broken, and that a piece of the lock and a fragment of the door were found on the floor of the kitchen; the remainder of the lock being in the door. And one or more of these witnesses testified that the door opened towards the inside, indicating that it had been locked or otherwise fastened, and broken by the application of powerful pressure from the outside. Now, what light does that throw upon the credibility of the story told by the defendant, Valentina? What light does that throw upon the motive and purpose that actuated her when she ascended the staircase and entered the kitchen of Rosa? Does that indicate that she came there peaceably and on invitation, or does it indicate that she pushed her way in against the will of the occupant, and with a violent purpose in her mind? Does that tend to show that the fatal deed which afterwards occurred was committed hastily, or does it tend to show on the contrary, that what she did was done deliberately, wilfully, and with premeditation?

Another circumstance that clearly appears from the testimony of the two physicians who performed the autopsy on the body of Rosa, and that is not at all disputed, is this: that besides the numerous wounds about the breast and neck of Rosa, the physicians found, as they say, numberless cuts upon the back of the fingers and hands and wrists of Rosa, many of them cutting into the bone. How did it happen that Rosa was thus cut upon her hand and wrists, if the stabbing was done in the manner indicated by the defendant's evidence? The cuts upon the backs of the hands can hardly be accounted for on the theory that they were received in a struggle for possession of the knife. Naturally, I should think, in such a struggle the wounds would be received rather on the inside of the hands, and I should think it would be natural to expect that the defendant would receive such wounds likewise; while the defendant says that her hands were un wounded. But if the defendant held the knife and attacked Rosa

101 with it, Rosa being unarmed, and if Rosa managed at first to avoid the assault, and to seize the defendant round the body with her arms, and if the defendant, struggling to be free, in order to pursue the assault, cut and slashed at Rosa's hands and

wrists with the knife, this might account, as I should think, for the numerous wounds on the back of Rosa's fingers and hands and wrists.

Now, in all these references that I am making to the evidence, gentlemen of the jury, you will understand that I do it not for the purpose of controlling your judgment, but for the purpose of guiding you in your consideration of the evidence. You are the judges of the evidence, and your own recollection of what the testimony is, and your own judgment of its weight and force upon your mind, must be your guide.

Again, you have the fifteen wounds upon the neck of Rosa, the three upon her breast, the one upon her face, one upon her forehead, and one upon the top of her head. Some of these, the physicians say, were superficial; others, they say, cut down to the bone; some were stabs, some were glancing cuts or slashes, extending to a depth of from one to three inches; five wounds on the left side of the neck, six upon the right side, both jugular veins partially severed; so that the blood flowed, and so that death was the necessary consequence, unless the wounds were promptly sutured. Remember, the important inquiry is, whether these wounds were delivered with an intent merely to do bodily harm, or whether they were delivered with an intent to take life, and whether the intent was carried out wilfully, deliberately, and with premeditation. If one such wound would evince merely an intent to do bodily harm, what is the inference to be drawn from fifteen such wounds delivered about the neck? What intent was manifested by the three wounds upon the breast, one at least going to the bone?

Mrs. Norgia testifies in substance, that when she reached the premises she saw Rosa on the floor dead, and this defendant was there stabbing her in the breast. The same witness testifies that Rosa was lying on the floor with her face upwards, her face being covered with her hair; that Anna had much blood upon her, and that when the witness spoke to Anna and took the knife from her, she said to her, "Anna, what have you done?" And Anna answered back, saying, "I know what I have got in my gut, in my stomach," and then Anna went downstairs, opened the faucet, washed her hands, and went out.

The witness Stephen Nebesni says in substance, that when Anna came out of the house she had blood on her hands, and that she wiped her hands on her apron and threw the apron behind her house, and ran home and got a parcel, cape and shawl, and went to the trolley car; and Anna said to him, "I will kill you to-, if you don't go back." What light does this throw upon the purpose that was in the defendant's mind when she delivered the fatal wounds upon the body of Rosa Salza?

Upon the whole case, therefore, gentlemen of the jury, not confining your attention to the testimony that I have referred to, but considering the whole of the evidence, according to your recollection of it—not relying upon mine—and giving to the evidence such weight as it possesses upon your minds, it is your duty to determine whether the defendant intended to kill Rosa Salza, and carried out

that purpose wilfully, deliberately, and with premeditation. If she did, she is guilty of murder in the first degree, and it is your duty to say so by your verdict. If not, then on the admitted facts of the case, she is guilty of murder in the second degree, and it is your duty to say that by your verdict.

Verdict.

The jury retired to consider of their verdict, having an officer sworn to attend them; the jury came into Court and being called all appeared and say they have agreed upon their verdict and say they find the defendant guilty of murder in the first degree, and so say they all.

103 STATE OF NEW JERSEY, *Bergen County, ss:*

I hereby certify that the foregoing is the entire record of the proceedings had upon the trial of Anna Valentina in the Bergen County Court of Oyer and Terminer upon indictment for the murder of Rosa Salza, except the opening address of the Prosecutor and the summing up of counsel for the defendant and of the Prosecutor to the jury at the close of the case, which were not reported verbatim.

MAHLON PITNEY,

Presiding Judge.

104 In Chancery of New Jersey.

In the Matter of the Application of ANNA VALENTINA for a Writ of Error.

Application having been made this day by James M. Trimble, attorney of Anna Valentina, for a writ of error in the above stated cause, and the Court having considered said application, and there appearing to be no sufficient reasons why the same should be granted:

It is, on this twentieth day of June, nineteen hundred and four, ordered that the said application be, and the same is hereby denied.

W. J. MAGIE, C.

STATE OF NEW JERSEY, *Bergen County.*

Be it remembered that at a Court of Oyer and Terminer, holden at New Barbadoes, in and for the County of Bergen, on the first Tuesday of April, in the year of our Lord one thousand nine hundred and four, before the Honorable Mahlon Pitney, Esquire, Associate Justice of the Supreme Court of the Judicature of the State of New Jersey, and David D. Zabriskie, Esquire, Judge of the Court of Common Pleas of the said County of Bergen, according to the form of the statute in such case made and provided, by the oath of Edward J. Turner, Joseph N. Mileham, Joseph H. Blauvelt, Charles W. Morris, John McCroder, William H. Tracey, Gerome Sardi,
105 Archibald D. Lees, John H. Riley, John N. Lewis, James W. Pullis, Vernando Van Buskirk, Martin Smith, William H.

Cadmus, William Tate, James A. Osborne, John Engel, William H. Novo, Clarence E. Dutton, Alfred Gramlich, David Watson, Charles F. Harrington, good and lawful men of the body of the County of Bergen aforesaid, duly summoned and returned and then and there sworn and charged to enquire in behalf of the State of New Jersey in and for the County of Bergen, it is presented in manner and form as follows:

"Bergen Oyer and Terminer, April Term, A. D. 1904.

BERGEN COUNTY, *To wit:*

The Grand Inquest of the State of New Jersey, in and for the County of Bergen, upon their respective oaths, Present, that Anna Valentina, late of the Borough of Lodi, in the said County of Bergen, on the tenth day of March, in the year of our Lord one thousand nine hundred and four, at the Borough aforesaid, in the County aforesaid, and within the jurisdiction of this Court, wilfully, deliberately, premeditatedly, feloniously, and of her malice aforethought, did kill and murder one Rosina Salza, contrary to the form of the statute in such case made and provided, against the peace of the State, the government and dignity of the same."

And afterwards, to wit: on Tuesday, *the fifth day of April*, in the year of our Lord one thousand nine hundred and four, at a session of the Court of Oyer and Terminer aforesaid, being as yet of the term of April aforesaid, before the Honorable Mahlon Pitney, Esquire, Associate Justice aforesaid, at New Barbadoes aforesaid, in the County of Bergen aforesaid, here cometh the said Anna Valentina under the custody of Charles R. Soley, Esquire, Sheriff of the County of Bergen aforesaid (in whose custody in the goal of the County aforesaid she had been before committed for the cause aforesaid) being brought to the bar here in her proper person by the Sheriff aforesaid, to whom she is also here committed, and
 106 having heard the indictment read and forthwith being commanded of and concerning the premises in the said indictment above specified and charged upon her, how she will acquit herself thereof, she said she is not guilty, and thereof for good and evil she puts herself upon the county; and Ernest Koester, Esquire, Prosecutor of the Pleas for said County of Bergen, who prosecutes for the State of New Jersey in this behalf, doth the like:

Therefore, let a jury come here before our said Court of Oyer and Terminer, at New Barbadoes, in the County of Bergen aforesaid, at the same Term of the Court of Oyer and Terminer aforesaid, on Wednesday, the thirteenth day of April next ensuing, being as yet of the term of April, in the year of our Lord one thousand nine hundred and four, of twelve good and lawful men, each of whom shall be a citizen of this State and resident within the County of Bergen aforesaid, above the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be the better known, and who are not of kin to the said Anna Valentina, to recognize upon their oaths whether the said

Anna Valentina be guilty of the murder in the indictment aforesaid specified, or not guilty, because as well the said Ernest Koester, Esquire, Prosecutor of the Pleas for the said County of Bergen aforesaid, who prosecutes for the State of New Jersey aforesaid, in this behalf, as the said Anna Valentina, have put themselves upon the said Jury; and the same day is given to the parties aforesaid, at the same place; at which day, to wit, on Wednesday, the thirteenth day of April, in the year of our Lord one thousand nine hundred and four (being as yet of the Term of April, in the year of our Lord one thousand nine hundred and four) at the same session of the Court of Oyer and Terminer aforesaid, held at New Barbadoes, in the County of Bergen aforesaid, before the said Mahlon Pitney, Esquire, Associate Justice aforesaid, and the said David D. Zabriskie, Esquire, Judge of the

107 Court of Common Pleas in and for the County of Bergen aforesaid, here cometh as well as the said Ernest Koester, Esquire, Prosecutor of the Pleas as aforesaid, who prosecutes as aforesaid, as the said Anna Valentina, under the custody of the Sheriff as aforesaid, being brought to the bar here in her proper person by the said Sheriff; and the jurors of the said jury, by the Sheriff of the county aforesaid for this purpose empanelled and returned, to wit: George Van Houten, Francis Oldis, Albert Young, Charles Du Bois, Harvey D. Banta, Daniel Van Blarcom, Cornelius D. Schor, John Dutcher, Walter Hague, Warren M. Cluss, Albert Demarest, Samuel Phillips, being called, come, who, being chosen, tried and sworn to speak the truth of and concerning the premises, upon their oaths say that the said Anna Valentina is guilty of the felony and murder aforesaid on her above charged in the manner and form aforesaid, as in and by the said indictment is above alleged against her; and that they designate and find that the degree of the said murder and felony is murder in the first degree and that she is guilty thereof.

And afterwards, to wit, on Saturday, the sixteenth day of April, in the year of our Lord one thousand nine hundred and four, being as yet of the Term of April aforesaid, it was demanded of her, the said Anna Valentina, if she hath or knoweth anything to say whereof the Court here ought not to proceed to pass judgment against her, who nothing further saith unless she hath before said;

Wherefore, all and singular the premises being seen and by the Court here fully understood, it is considered by the Court, and the sentence of the law is, and the Court doth now order and adjudge that for the crime of murder in the first degree in respect to the killing of Rosina Salza, of which the said Anna Valentina has been convicted, she be taken by the Sheriff to the place of confinement whence she came and there kept in safe custody until Thursday, the nineteenth day of May next, and that on that day, between the hours of eight o'clock in the morning and two o'clock in the afternoon, 108 either in the prison where she shall be confined, or within the enclosed yard of said prison, if there be one, or within an enclosure erected for the purpose adjoining said prison, at the discre-

tion of the Sheriff, the said Anna Valentina be hanged by the neck until dead.

STATE OF NEW JERSEY, *County of Bergen*, ss:

I, John R. Ramsey, Clerk of the County of Bergen, and also Clerk of the Court of Oyer and Terminer in and for said county, do hereby certify that the foregoing is a true copy of the Judgment Roll in the above case as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, at Hackensack, in said County, this 28th day of June, A. D., one thousand nine hundred and four.

[L. S.]

JOHN R. RAMSEY, *Clerk*.

NEW JERSEY, ss:

[Seal Sec. State.]

The State of New Jersey to the Honorable Mahlon Pitney, Presiding Judge of the Court of Oyer and Terminer holden at Hackensack in and for the County of Bergen, of the Term of April, in the year of our Lord nineteen hundred and four.

Because in the Indictment, Record, Process and Proceedings, and in giving Judgment upon said Indictment against Anna Valentina, late of the Borough of Lodi, in the County of Bergen, for that she did, on the tenth day of March, in the year nineteen hundred and four, at the borough aforesaid, in the county aforesaid, wilfully, feloniously and of her malice aforethought, kill and murder one Rosina Salza, &c.

109 Which indictment was found by the Grand Jury of the said County of Bergen, at the April term of the Court of Oyer and Terminer, in said county, in the year nineteen hundred and four; and after being tried and the defendant found guilty in said Court of Oyer and Terminer of Bergen County, was sentenced by said Court to be hanged by the neck on the nineteenth day of May, in the year nineteen hundred and four, by the Sheriff of the said County of Bergen, in a place to be provided by said Sheriff, until she, the said Anna Valentina, was dead.

And in the said Indictment, Record, Judgment and Proceedings, as it is said, manifest error hath intervened to the great damage of the said Anna Valentina, as from her complaint we have received information, we being willing in this behalf to correct the error in due form and manner if any there be, and that speedy justice be done to her, the said Anna Valentina;

Command you that if judgment be therein given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, to be held at Trenton the ninth day of July, nineteen hundred and four, and this writ, that the record and proceedings aforesaid be inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Witness, Hon. William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the twentieth day of June nineteen hundred and four.

S. D. DICKINSON, *Clerk.*

JAMES M. TRIMBLE, *Attorney.*

110 The Answer of the Court of Oyer and Terminer in and for the County of Bergen within named:

The record and proceedings whereof mention is within made, with all things touching and concerning the same, to the Court of Errors and Appeals at Trenton, at the day and year within contained, is certified in a certain schedule to this writ annexed, as within I am commanded.

MAHLON PITNEY, *J. S. C.*

111 New Jersey Court of Errors and Appeals.

ANNA VALENTINA, Plaintiff in Error,

vs.

THE STATE OF NEW JERSEY.

On Order to the Bergen County Oyer & Terminer.

A writ of error having been issued out of this Court in the above cause at the last term and it appearing that there is not sufficient time to bring on the hearing of the cause at the term next after the rendering of judgment in the Court below, and application being made on the first day of the present term by James M. Trimble, attorney of the plaintiff in error, to this Court for such order as may be necessary to secure the hearing and determination of said cause.

It is on this twenty-first day of June, A. D. nineteen hundred and four, ordered that said cause be and the same is hereby set down for hearing and determination on the first day of the next November Term.

On motion of

JAMES M. TRIMBLE,

Atty. of Plff. in Error.

112 *Stipulation.*

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error.

vs.

ANNA VALENTINA, Plaintiff in Error.

At the request of James M. Trimble, attorney of the Plaintiff in Error in the above stated cause, consent is hereby given that the time for filing and serving assignment of errors in the above stated cause

be, and the same is hereby extended until the twentieth day of August, instant.

Dated Hackensack, N. J., August 6th, 1904.

ERNEST KOESTER,
Atty. and of Counsel with Deft. in Error.
JAMES M. TRIMBLE,
Atty. of Plff. in Error.

113

Assignment of Errors.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Def't in Error,

vs.

ANNA VALENTINA, Plt'ff in Error.

Afterwards, to wit, on the ninth day of July, in this term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton, comes the said Anna Valentina by James M. Trimble, her attorney, and says that in the record and proceedings aforesaid, and also in giving of judgment aforesaid, there is manifest error in this, to wit:

First.—There is manifest error in the record and proceedings in this, to wit, that by the law of the land the said Anna Valentina was entitled to a trial of the matter of fact put in issue by her plea of "not guilty" whereas, the said proceedings were in the nature of an inquiry to determine the degree of guilt, such as was formerly provided for by Section 68 of the act for the punishment of crimes, approved March 27th, 1874.

Second.—There is also manifest error in this, to wit, that by the law of the land the said Anna Valentina was entitled to a trial on the matter of fact put in issue by her plea of "not guilty," and to every defence available under her said plea, whereas, she was assumed by her counsel, the Court and jury to be guilty of murder, and the only question determined by the jury was the degree of murder.

114 *Third.*—There is also manifest error in this, to wit, that the said Anna Valentina was entitled, by the law of the land, to a trial on the matter of fact put in issue by her plea of "not guilty," and on said trial to every presumption the law allows, and especially to the presumption of innocence of the crime charged in the indictment until proved guilty beyond a reasonable doubt, whereas, the said defendant in the said proceedings was deprived of the benefit of all presumptions in her favor and assumed to be guilty of murder.

Fourth.—There is also manifest error in the record and proceedings, in this, to wit, that it appears in and by said record that the counsel of said defendant stated to the jury in the alleged trial of defendant, "This defendant, when arraigned in open court, made confession of the commission of this crime, and you, gentlemen of the jury, from the evidence that has been produced on the part of the

State, and that which has been offered on the part of the defence will simply have to determine what the degree of guilt shall be. Your verdict will be either that she is guilty of the taking of the life of this woman, Mrs. Salza, with malice aforethought, premeditated, which would mean a verdict of murder in the first degree, or your verdict will be murder in the second degree"; whereas, there was and is no such "confession of the commission of this crime" in the said record and proceedings; and by the law of the land it became and was the duty of the Judge presiding at the alleged trial of the said defendant to have corrected the mis-statement of counsel and to have informed the jury there was no such confession before them, or to be considered by them, which the said Judge failed to do, to the manifest injury of defendant.

Fifth.—There is also manifest error in the said record and proceedings, in this, to wit, that it appears in and by said record that when the counsel of the said defendant, during the said alleged trial, made the statement to the jury herein above set forth in the fourth assignment of error, there being no such confession of said
115 crime in the said record and proceedings as aforesaid, that the Judge presiding at said alleged trial instead of correcting said mis-statement of counsel to the jury, did give it as his opinion and did decide and charge the jury that said mis-statement was a correct statement and that the only question left for the jury's consideration was whether it was murder in the first degree or in the second degree, as "the learned counsel for the defendant frankly and properly stated in his opening and closing address before you."

Sixth.—There is also manifest error in the said record and proceedings, in this, to wit, that, by said statement of counsel made to the jury in said alleged trial as heretofore set forth in the fourth assignment of error, adopted by the Court and charged to the jury as aforesaid, the said defendant was denied the benefit of her plea of not guilty, said plea being limited and restricted in its effect by the Judge presiding at said trial to the question of whether the said defendant was guilty of murder in the first degree, and the only question submitted by said Judge to the jury to be determined by their verdict being the question of the degree of defendant's guilt, to wit, whether she was guilty of murder in the first degree or second degree; whereas, under the circumstances and by the law of the land, even if defendant had pleaded guilty of the commission of the crime of murder such a plea of guilty should have been disregarded and the trial proceeded with as though no such plea of guilty had been made.

Seventh.—There is also manifest error in the said record and proceedings, in this, to wit, that the Court, counsel and jury acted upon the assumption that the defendant had made confession of the crime of murder, whereas, there was and is no such confession in the said record and proceedings.

Eighth.—That in the record and proceedings aforesaid, there is also manifest error in this, to wit, that the said Judge did then and there give his opinion and did charge the jury, "That on the
116 admitted facts of the case the defendant is guilty of murder in the second degree"; whereas, in truth and fact, there was no such "admitted facts" in the said record and proceedings.

Ninth.—There is also manifest error in this, to wit, that the said Judge did then and there decide and charge the jury that "There is no evidence in the case from which you have any right to infer that the defendant was not mentally responsible for her acts"; whereas, there was some evidence on which such an inference might be found, and the question should have been submitted to the jury for their consideration and determination.

Tenth.—There is also manifest error in this, to wit, that said Judge did then and there decide and did charge the jury as follows: "From all this it results, as a necessary conclusion of law upon the admitted facts in this case, that the defendant is guilty of the crime of murder"; whereas, in truth and fact, no such conclusion necessarily resulted from the admitted facts in the case, but on the contrary, the admitted facts of the case might have justified an acquittal or a verdict of manslaughter.

Eleventh.—There is also manifest error in this, to wit, that said Judge did then and there decide and did charge the jury as follows: "From all this it results as a necessary conclusion of law, upon the admitted facts in the case that the defendant is guilty of the crime of murder"; whereas, by the law of the land, if there were such admitted facts it was the province of the jury to decide whether it necessarily followed from such facts that the defendant was guilty of murder.

Twelfth.—There is also manifest error in the record and proceedings, in this, to wit, that it appears in and by said record that the Judge presiding at the alleged trial of defendant did decide and charge the jury that "It is your duty to determine whether the defendant intended to kill Rosa Salza and carried out her purpose wilfully, deliberately and with premeditation. If she did she is
117 guilty of murder in the first degree, and it is your duty to say so by your verdict. If not, then on the admitted facts of the case she is guilty of murder in the second degree, and it is your duty to say so by your verdict," whereas, there were and are no admitted facts in said record and proceedings which show defendant was necessarily guilty of murder in the second degree and, if there were such facts, it was the province of the jury to determine them, and not the Court.

Thirteenth.—There is also manifest error in the record and proceedings, in this, to wit, that it appears in and by said record that the Judge presiding at said trial give it as his opinion and decide and charge the jury as follows: "In this case it is admitted that the defendant is guilty of murder in the second degree and that will be your verdict, unless the evidence has satisfied you beyond a reasonable doubt that the defendant intended to take Rosa Salza's life, and that the intent was carried into execution wilfully, deliberately and with premeditation," and also further charged as follows: "Now therefore, it is for you to say upon the evidence whether these elements of murder in the first degree have been established beyond a reasonable doubt," whereas, by the law of the land, the said defendant was entitled under her plea of "not guilty" to the benefit of a reasonable doubt as to whether she was guilty of any crime what-

soever, and a presumption of innocence of any crime until proved guilty to the satisfaction of a jury.

Fourteenth.—There is also manifest error in this, to wit, that the said Judge did then and there give his opinion and did charge the jury as follows: "Neither is there any question of manslaughter in this case," whereas, in truth and in fact, there was evidence in the said cause in the testimony of the said defendant which would have justified the jury, if they believed her guilty of any crime, in rendering a verdict of manslaughter.

Fifteenth.—There is also manifest error in this, to wit, that the said Judge did then and there decide and give it as his opinion
118 and charge the jury as follows: "Therefore you would not be justified in acquitting the defendant on the ground of self-defence," whereas, the testimony of the defendant, if believed by the jury, might have justified them in believing that the mortal wounds were inflicted by the defendant in self-defence and justified a verdict of acquittal, and should have been submitted to the jury by the Court for their consideration under proper instruction.

Sixteenth.—There is also manifest error in the said record and proceedings, in this, to wit, that said Judge presiding at the said alleged trial of defendant did decide and charge the jury as follows: "Neither is there any evidence to show that the defendant killed Rosa Salza in her necessary self defence," whereas, said question should have been submitted to the jury for their consideration and determination.

Seventeenth.—There is also manifest error in this, to wit, that the said Judge did give it as his opinion and did charge the jury as follows: "Now, we have in this State a criminal statute, one section of which declares that if any person in committing, or attempting to commit, any unlawful act against the peace of this State the probable consequence of which may be bloodshed, shall kill another, he shall be guilty of murder. Under this statute, no provocation, however reasonable, however recent, and no matter what heat of blood may be engendered thereby, no provocation is adequate to mitigate the killing from murder to manslaughter, if the killing be done in a manner and with a weapon that will necessarily produce bloodshed," whereas, the section of the statute to which the Judge referred relates to a killing in the commission of some other felony, and had no application whatever to the case of the said defendant, and tended to confuse, prejudice and mislead the jury in the consideration of the defendant's case.

Eighteenth.—There is also manifest error in this, to wit, that the Court charged the jury that, "Of course, even if you believe that the defendant did not herself take the knife to Rosa's house, it is
119 possible that she found the knife lying on the table in Rosa's room, and seized it and attacked Rosa with it," whereas, there was no evidence to support such a verdict of what transpired at the time of the commission of the homicide.

Nineteenth.—There is also manifest error in this, to wit, that the Court charged the jury that, "Of course, even if you believe that the defendant did not herself take the knife to Rosa's house, it is pos-

sible that she found the knife lying on the table in Rosa's room, and seized it, and attacked Rosa with it," thereby charging the jury in effect that they might draw inferences prejudicial to the defendant from unproved assumptions of fact, to the manifest injury of the said defendant.

Twentieth.—There is also manifest error in this, to wit, that the Court charged the jury in referring to the wounds upon the backs of the hands and wrists of the deceased that, "if the defendant held the knife and attacked Rosa with it, Rosa being unarmed, and if Rosa managed at first to avoid the assault and to seize the defendant around the body with her arms, and if the defendant, struggling to be free in order to pursue the assault, cut and slashed at Rosa's hands and wrists with the knife, this might account, as I should think, for the numerous wounds on the back of Rosa's hands and wrists;" whereas the testimony does not support this series of inferences, nor any of them, and said charge tended to becloud the minds of the jury as to facts actually proved and warrants them in arriving at conclusions prejudicial to the defendant on unproved and unfounded assumptions of fact.

Twenty-first.—There is also manifest error in this, to wit, that the Court at said alleged trial permitted illegal evidence in this, to wit, that in rebuttal it permitted Louis Buonocore to testify to an alleged admission made through him to the Prosecutor, that the said defendant, in answer to the question if she broke the door, or not, said that "Rosa was on the inside trying to push the door towards
120 the outside after Rosa had called her upstairs, and that she was trying to push the door toward the inside to see what Rosa wanted; whereas, by the law of the land, to render said testimony admissible it was necessary to show that the said defendant, making the said alleged admission, knew the official character of the person to whom she was making it; whereas, there was no such evidence in the case.

Twenty-second.—There is also manifest error in this, to wit, that the counsel of the said defendant admitted at the close of the case, in summing up the evidence to the jury that his client was guilty of murder in the second degree; whereas, the evidence did not show that the defendant was guilty of murder in the second degree, and it was the duty of the Court to have corrected the same.

Twenty-third.—There is also manifest error in this, to wit, that the said charge, as a whole and in each and every part of it was illegal, and thereby defendant suffered manifest wrong and injury.

Twenty-fourth.—There is also manifest error in the said record and proceedings in this, to wit, that the entire evidence in said cause, as a whole, did not show beyond a reasonable doubt that the said defendant, Anna Valentina, was guilty of the crime of murder in the first degree and did not justify a verdict of the jury to that effect.

Twenty-fifth.—There is also manifest error in the said record and proceedings, and in the giving of judgment therein, in this, to wit, that the entire record of the proceedings had upon the trial of said Anna Valentina shows that the said plaintiff suffered manifest

wrong and injury in the admission of evidence and in the charge of the Court.

121 And the said Anna Valentina prays that the judgment aforesaid for the errors aforesaid, and for other errors therein, may be reversed, annuled and altogether holden for nothing, and that she may be restored to all things which she has lost by reason of said judgment.

JAMES M. TRIMBLE,
Attorney of and of Counsel with Anna Valentina,
Plaintiff in Error.

122 *Joinder in Error.*

New Jersey Court of Errors and Appeals.

THE STATE, Defendant in Error,
vs.
ANNA VALENTINA, Plaintiff in Error.

And hereupon comes Ernest Koester, Prosecutor of the Pleas of the State of New Jersey in and for the County of Bergen, aforesaid, and says that there is no error, either in the record and proceedings aforesaid, or in the giving of Judgment aforesaid, and in behalf of the State of New Jersey, he prays the Court of Errors and Appeals, before the Justices thereof here may proceed to examine as well the record and proceedings aforesaid, as also the several causes before assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed, etc.

ERNEST KOESTER,
Prosecutor of the Pleas of the State of New Jersey for the
County of Bergen for the Defendant in Error.

123 New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
ANNA VALENTINA, Plaintiff in Error.

On Writ of Error to the Bergen County Court of Oyer and Terminer.

Consent.

Consent is hereby given that the second assignment of errors be amended by inserting therein, after the words not guilty, the following, to wit, "And to every defence available under her said plea."

ERNEST KOESTER, *Prosecutor.*

Newark, N. J., November 2, 1904.

124 New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
 ANNA VALENTINA, Plaintiff in Error.

On Writ of Error to the Bergen County Court of Oyer and Terminer.

Notice of Specification of Causes for Reversal.

To Ernest Koester, Esq., Prosecutor of the Pleas of Bergen County.

SIR: Please take notice that the said plaintiff in error, having elected to take up the entire record with her Writ of Error, does hereby specify the causes in the record relied upon by her for relief or reversal on said Writ of Error, as follows, that is to say: The errors in the said record alleged in the Assignment of Errors heretofore filed in this cause on said Writ of Error, a copy of which has been duly served upon you, and plaintiff in error hereby adopts the said Assignment of Errors as amended, and the errors therein specified in manner and form as therein expressed, as her specification of the causes under Section one hundred and thirty-seven of the act for the punishment for crimes, Revision 1898, on which she relies for relief or reversal in this cause.

Respectfully yours,

JAMES M. TRIMBLE,
Attorney and of Counsel with
Plaintiff in Error.

Newark, N. J., November 1, 1904.

I herewith consent that the Assignments of Error as amended served in this case upon you may be regarded as Plaintiff's in Error specification of causes for reversal.

ERNEST KOESTER, *Prosecutor.*

November 2, 1904.

125 *Order Refusing Writ of Habeas Corpus.*

United States Circuit Court, District of New Jersey.

ANNA VALENTINA

vs.

JAMES W. MERCER, Sheriff of the County of Bergen, New Jersey.

The writ applied for is refused because in my opinion it appears from the petition that the petitioner is not entitled thereto.

Dated May ninth, nineteen hundred and five.

W. M. LANNING, *Judge.*

(Endorsed:) United States Circuit Court, District of New Jersey. Anna Valentina,—*vs.*—James W. Mercer, Sheriff, &c. Order refusing writ of *Habeas Corpus*. Filed May 9, 1905. H. D. Oliphant, Clerk.

- 126 Ernest Koester, Esq., Prosecutor of the Pleas of the County of Bergen.

SIR: Take notice, that on Monday the eighth day of May, nineteen hundred and five, we shall apply to his Honor William M. Lanning, Judge of the United States Circuit Court, or such other Judge as may be sitting for the District of New Jersey, at Trenton, at the Court room in said city, at the hour of eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, for a writ of *habeas corpus* on the body of Anna Valentina, now confined in the Bergen County Jail at Hackensack, New Jersey, under sentence of death for the murder of Rosa Salza, on the ground that her conviction of said crime was without due process of law, and that she is unjustly restrained of her liberty by said conviction, and for other reasons which will be fully stated in a petition which will be presented at that time.

Newark, N. J., May 5th., 1905.

JAMES M. TRIMBLE,
NATHAN KUSSY,
Att'ys of Anna Valentina.

(Endorsed:) United States Circuit Court—Anna Valentina *vs.* The State of New Jersey—On *Habeas Corpus*. (Notice) James M. Trimble & Nathan Kussy, Att'ys of Anna Valentina, #828 Broad Street, Newark N. J.—Filed May 9, 1905. H. D. Oliphant, Clerk.

- 127 Due and legal service of a copy of the within notice acknowledged this 6th day of May, 1905, at Hackensack, N. J.
ERNEST KOESTER,
Prosecutor of the Pleas for Bergen County, N. J.

- 128 United States Supreme Court.

ANNA VALENTINA, Plaintiff & Appellant,
vs.

JAMES W. MERCER, Sheriff of Bergen County, New Jersey, Defendant & Appellee.

Afterwards, to wit, on the ninth day of May, in the year nineteen hundred and five, before the Justices of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, comes the said Anna Valentina by her Attorney and says that in the record and proceedings aforesaid, there is manifest error in this, to wit, in refusing to issue the writ of *Habeas Corpus* as prayed for.

Whereas by the law of the land the judgment ought to have been given for the Plaintiff against the said defendant, and that the said Plaintiff prays the judgment aforesaid, may be reversed, amended, and altogether held for nothing, and that she may be restored to all things which she hath lost by occasion of said judgment.

JAMES M. TRIMBLE,
Attorney for Plaintiff in Error & Appellant.

(Endorsed:) United States Circuit Court, District of New Jersey. Anna Valentina, —*vs.*— James W. Mercer, Sheriff, &c., Assignment of Errors. Filed May 9, 1905. H. D. Oliphant, Clerk.

129 In the Circuit Court of the United States, District of New Jersey.

ANNA VALENTINA, Plaintiff & Appellant,

vs.

JAMES W. MERCER, Sheriff of the County of Bergen, New Jersey,
Defendant & Appellee.

The above named plaintiff, Anna Valentina, considering herself aggrieved by the judgment entered on the ninth day of May nineteen hundred and five, in the above entitled proceedings, doth hereby appeal from the said judgment to the Supreme Court of the United States and she prays that this appeal be allowed and that a transcript of the record and proceedings and papers, upon which said judgment was made duly authenticated may be sent to the Supreme Court of the United States.

Att.:

JAMES M. TRIMBLE,

Attorney for Plaintiff & Appellant.

And now to wit on the ninth day of May, A. D. nineteen hundred and five the appeal is allowed as prayed for by and in pursuance of the Statute in such case made and provided.

W. M. LANNING, *Judge.*

130 (Endorsed:) United States Circuit Court, District of New Jersey. Anna Valentina *vs.* James W. Mercer, Sheriff, &c. Petition and Allowance of Appeal. Filed May 9, 1905. H. D. Oliphant, Clerk.

131 UNITED STATES OF AMERICA:

The President of the United States of America to James W. Mercer, Sheriff of Bergen County, New Jersey, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C., on the eighth day of June, nineteen hundred and five, pursuant to an appeal filed in the Clerk's office of the United States Circuit Court of New Jersey, wherein Anna Valentina is Appellant and you are Respondent, to show cause, if any there be, why the judgment rendered against the said Appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, Hon. William M. Lanning, one of the Judges of the Circuit Court of the United States of America, the ninth day of May, nineteen hundred and five.

W. M. LANNING, *Judge.*

Due and legal service of a copy of the foregoing citation is hereby acknowledged this ninth day of May, nineteen hundred and five.

ROBERT H. McCARTER,

Attorney General.

ERNEST KOESTER,

Prosecutor of the Pleas.

JAMES W. MERCER,

Sheriff of the County of Bergen, N. J.,

By WILLIAM V. A. BLAUVELT,

Under Sheriff of said County.

JAMES W. MERCER, *Sheriff.*

132 [Endorsed:] United States Circuit Court, District of New Jersey. Anna Valentina *vs.* James W. Mercer, Sheriff &c. Citation. James M. Trimble, Atty., 828 Broad Street, Newark, N. J. Filed May 17, 1905. H. D. Oliphant, Clerk.

133 UNITED STATES OF AMERICA, *District of New Jersey, as:*

I, Henry D. Oliphant, Clerk of the Circuit Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a full true and complete transcript in the case of Anna Valentine *vs.* James W. Mercer, Sheriff of Bergen County, New Jersey, on file, and now remaining among the records of the said Court, in my office.

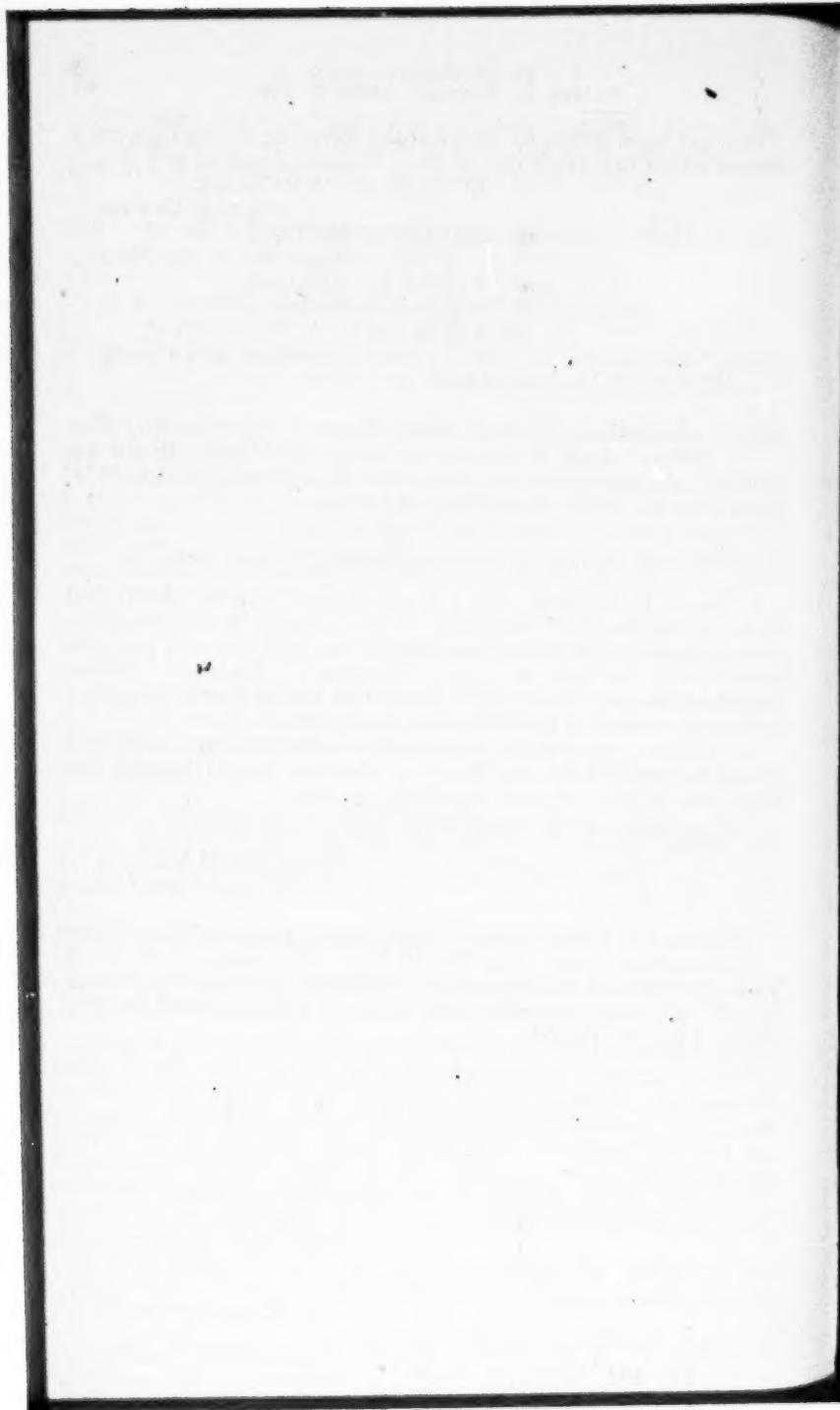
In testimony whereof, I have hereunto subscribed my name and affixed the Seal of the said Court, at Trenton, in said District, this Sixth day of June nineteen hundred and five.

[Seal of the U. S. Circuit Court, Dist of New Jersey.]

H. D. OLIPHANT,

Clerk Circuit Court U. S.

[Endorsed:] United States Circuit Court. District of New Jersey. Endorsed on cover: File No. 19,906. New Jersey C. C. U. S. Term No. 404. Anna Valentina, Appellant, *vs.* James W. Mercer, Sheriff of Bergen County, New Jersey. Filed September 15th, 1905. File No. 19,906.



FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 404.

Office Supreme Court U. S.
FILED

DEC 30 1905

JAMES H. McKNNEY,
Clerk.

ANNA VALENTINA, APPELLANT,

vs.

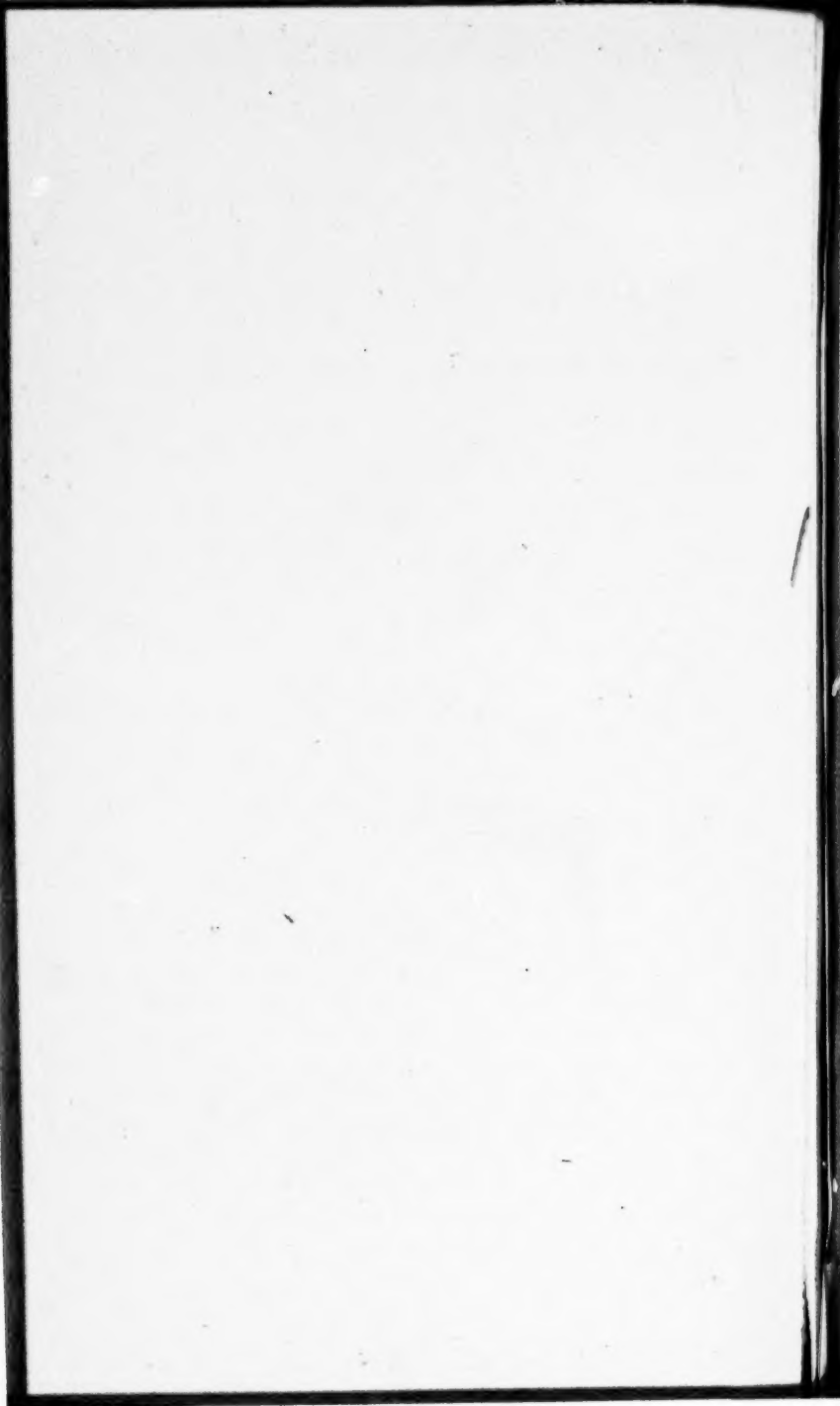
JAMES W. MERCER, SHERIFF, &c.

/

MOTION TO ADVANCE.

ROBERT H. McCARTER,
Attorney General of the State of New Jersey,
for the Appellee.

(19,906.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 404.

ANNA VALENTINA, APPELLANT,

vs.

JAMES W. MERCER, SHERIFF, &c., APPELLEE.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF NEW JERSEY.

Statement and Reasons for Advancement of Cause.

The appellant, Anna Valentina, was convicted in the State of New Jersey, in the Bergen county court of oyer and terminer in that State, on the fourteenth day of April, A. D. nineteen hundred and four, of murder in the first degree, and was duly sentenced on the sixteenth day of April, A. D. nineteen hundred and four, to be hanged on Thursday, the nineteenth day of May, A. D. nineteen hundred and four. The appellant being an indigent person and unable to employ counsel, counsel was assigned by the court to defend her. The counsel so assigned had been admitted to practice in the courts of said State for twenty-seven years, and holds the office of a special master in chancery, an examiner in chancery, and a supreme court

commissioner. No action was taken by the counsel so appointed to review the judgment entered against the appellant, but an application was made by him to the court of pardons of New Jersey for a commutation of sentence. On such application a full transcript of the record of the trial was presented to that court, and after having duly considered the same the application was denied. No further action in the cause was taken by the counsel appointed by the court, but upon the announcement of the decision of the court of pardons the present counsel for the appellant obtained a writ of error, and carried the case to the court of errors and appeals of New Jersey, being the court of last resort of said State. The cause was duly argued at the November term, nineteen hundred and four, of said court, and on the sixth day of March, nineteen hundred and five, the conviction of the appellant was affirmed. The appellant was thereupon resentenced on the fourth day of April, nineteen hundred and five, to be executed on the twentieth day of May, nineteen hundred and five.

A second application was then made to the court of pardons of said State for a commutation of sentence. On the fourth day of May, nineteen hundred and five, that court again denied the application, and a death warrant was duly issued directing the sheriff of the county of Bergen to proceed with the execution of the sentence on the twelfth day of May, nineteen hundred and five.

On the ninth day of May, nineteen hundred and five, or three days prior to the date fixed for execution, the present counsel of the appellant made application to the Honorable William M. Lanning, judge of the United States district court for the district of New Jersey, for a writ of *habeas corpus*, alleging as a ground for the interference of the Federal courts the following reasons:

1. The said appellant was deprived of her liberty without due process of law, in violation of the fourteenth amendment of the Federal Constitution.

2. That she did not understand the English language.

3. That her statements to the court were made through an interpreter, and that the court assigned to her counsel with whom she could not communicate except through an interpreter.

4. That her admission that she killed the deceased was misinterpreted and distorted into an offer of a plea of guilty of murder.

5. That her counsel stated to the jury in opening the case for the defense that the said appellant when arraigned in open court made confession of the commission of the crime, and that the verdict would be simply to determine what the degree of her guilt should be. That this statement had no foundation in the evidence.

The judge of the district court denied the application for said writ of *habeas corpus* upon the ground that from the petition it appeared that the petitioner was not entitled thereto.

From the determination of the district judge an appeal was taken to this court.

The grounds upon which the application to the district court were based were the same, or substantially the same, which had been previously passed upon by the court of errors and appeals of New Jersey, the alleged ground of Federal interference being that the appellant had not received a fair and impartial trial in accordance with the laws of this State, and that therefore, being a citizen of Italy, she had not received the protection guaranteed to her as a citizen of that country by the treaties existing between the Kingdom of Italy and the United States of America.

The only question for determination in this cause therefore is the single question whether the said appellant did in

fact receive a trial of the character guaranteed to citizens of Italy by the treaties existing between the Kingdom of Italy and the United States of America.

It is respectfully urged that this cause should be advanced for argument upon the following

REASONS.

1. That the validity of the trial in accordance with the laws of the State of New Jersey has been directly passed upon and decided adversely to the appellant by the highest court of review of that State.
2. That the execution of the sentence in the Bergen oyer and terminer has been delayed from the nineteenth day of May, nineteen hundred and four.
3. That the appeal in this cause directly attacks the administration of justice in said State of New Jersey and attempts to bring into discredit the administration of justice through the courts of said State.
4. That the cause has attracted large notoriety, and on account of the nature of the appeal tends to discredit the courts of the said State of New Jersey in the due administration of the criminal laws of said State.
5. That the case being a capital case, the interests of justice require a speedy determination.

All of which is respectfully submitted.

ROBERT H. MCCURTER,
Attorney General of the State of New Jersey.

SUPREME COURT OF THE UNITED STATES.

ANNA VALENTINA, *Appellant*,
 vs.
 JAMES W. MERCER, *Sheriff, &c., Appellee.* }

ON APPEAL FROM ORDER REFUSING WRIT OF HABEAS
 CORPUS.

Affidavit.

STATE OF NEW JERSEY, } ss:
 County of Bergen, }

Ernest Koester, being duly sworn according to law, on his oath deposes and says: I am the prosecutor of the pleas in and for the county of Bergen and held this position at the thirteenth day of April, nineteen hundred and four, at the time of the trial of the appellant, Anna Valentina, and have held that office continuously until the present time. I appeared on behalf of the State at the trial of the said Anna Valentina, who was tried for murder in the Bergen county court of oyer and terminer on the thirteenth and fourteenth of April, A. D. nineteen hundred and four. The said Anna Valentina was found guilty by the jury of the crime of murder in the first degree on the fourteenth day of April, nineteen hundred and four; and on the sixteenth day of April, in the same year, was duly sentenced to be hanged on Thursday, the nineteenth day of May, nineteen hundred and four.

The attorney who was appointed by the court to defend the said Anna Valentina was Mr. Milton M. Demarest, a practicing lawyer in this State in good standing, who was admitted to practice in the supreme court of this State as an attorney at the June term, eighteen hundred and seventy-seven, and three years later admitted by the same court to practice as a counselor. Mr. Demarest has been appointed a special

master in chancery, is an examiner in chancery, and holds the position of a supreme court commissioner.

No writ of error was taken by Mr. Demarest from the judgment of the court, but an application was made on her behalf to the court of pardons of New Jersey. An application having been made to the governor, a stay was granted pending the determination by the court of pardons of her case. Mr. Demarest presented her case before the court of pardons with a full transcript of the record of the trial. The application for pardon or commutation was duly considered by the court of pardons and denied. Upon the decision of the court of pardons being announced, Mr. James M. Trimble, an attorney and counselor at law of this State, then appeared in behalf of the appellant, Anna Valentina, and made an application to the governor for a further stay, to permit him to take a writ of error, bringing before the court of errors and appeals of the State of New Jersey for review the conviction of the said Anna Valentina. The stay applied for was duly granted, and on the twentieth day of June, nineteen hundred and four, a writ of error was issued out of the court of errors and appeals, bringing before it for review the conviction of the said appellant.

The case was argued at the next ensuing term of the court of errors and appeals, to wit, the November term, nineteen hundred and four, and a decision was rendered by that court on the sixth day of March, nineteen hundred and five, affirming the conviction of the appellant. The appellant was thereupon resented upon the fourth day of April, nineteen hundred and five, to be executed on the twelfth day of May, nineteen hundred and five.

The case was again submitted to the court of pardons for its consideration. That court, on the fourth day of May, nineteen hundred and five, again refused the application for pardon or commutation, and a death warrant was issued directing the sheriff of the county of Bergen to proceed with the execution of the sentence on the twelfth day of May,

nineteen hundred and five. On the ninth day of May, nineteen hundred and five, Mr. Trimble made application to the Honorable William M. Lanning, judge of the United States district court for the district of New Jersey, for a writ of *habeas corpus*, alleging as grounds for the interference of the Federal courts the same, or substantially the same, grounds which he had raised in his appeal to the court of errors and appeals of this State, namely, that the question of the appellant's guilt or innocence had not been passed on by the jury, but that the only question submitted to said jury was the degree of murder of which she was guilty; that the appellant's counsel, Mr. Demarest, had failed to properly present to the jury the question of the appellant's guilt or innocence, and that he had failed to present to the jury the question as to the appellant's mental capacity; that the trial judge in instructing the jury had failed to properly instruct the jury that it might find the appellant innocent, but had confined the deliberations of the jury to the determination as to whether the appellant was guilty of murder in the first or second degree. All of these questions were duly argued before the court of errors and appeals of the State and were decided by it adversely to the appellant.

The alleged ground of Federal interference was set forth in a petition that the appellant, being a citizen of Italy, had not received a trial of the character guaranteed to citizens of that country by the treaties existing between the kingdom of Italy and the United States of America.

No other Federal question was interposed, and, as I have said, the validity of the trial was upheld by the court of errors and appeals of this State in passing directly on that question, the court holding that a fair and impartial trial had been accorded to the appellant in accordance with the laws of this State and that she was legally convicted.

Deponent further says that, in the opinion of deponent, the application for a writ of *habeas corpus* is solely interposed for the purpose of preventing the due execution of the law-

ful sentence of the courts of this State; that the appellant has been accorded full protection in accordance with the laws of this State, and that the expenses of her defense in the trial court and the presentation of her case before the court of pardons and the necessary printing to present her case have been paid for by the State without expense to her.

Deponent further says that owing to the notoriety and publicity which have been given to this case, and owing to the attempt which has been made to convince the public that the appellant has not received a fair trial, and has not been protected in her legal rights, it is highly important that the case should receive speedy action at the hands of the Supreme Court of the United States, to which appeal has been taken, that the record of the case should be reviewed, and that an authoritative decision upon the points involved should be speedily given; that any delay in the disposition of this case will permit continued reflection to be brought against the administration of justice in the State of New Jersey, and will bring into disrepute the administration of the criminal law in this State.

ERNEST KOESTER.

Subscribed and sworn to before me this twenty-first day of September, nineteen hundred and five.

THEODORE BACKES,
Master in Chancery of New Jersey.

SUPREME COURT OF THE UNITED STATES.

ANNA VALENTINA, *Appellant*,
vs.
 JAMES W. MERCER, *Sheriff, Etc., Appellee.* }

ON APPEAL.

Notice of Motion to Advance.

TO JAMES M. TRIMBLE, *Attorney for Said Anna Valentina, Appellant, and the said Anna Valentina, Appellant:*

Take notice that I shall move before the Supreme Court of the United States, at the court-room of said court, in the city of Washington, D. C., on Monday, the fifteenth day of January next, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, to advance the above-entitled cause for argument, and that upon such motion I shall present to the court in support thereof the statement, reasons, and affidavit hereto annexed.

Respectfully, ROBERT H. MCCURTHER,
Attorney General of the State of New Jersey.

Dated December 27, 1905.

SUPREME COURT OF THE UNITED STATES.

ANNA VALANTINA, *Appellant*,
vs.
 JAMES W. MERCKER, *Sheriff, &c., Appellee.* }

ON APPEAL.

**Proof of Service of Notice of Motion to Advance,
 Statement, Reasons, and Affidavit.**

STATE OF NEW JERSEY, } ss:
County of Mercer,

Hervey S. Moore, of full age, being duly sworn, according to law, on his oath, says that he resides at Trenton, New Jersey, and that on Thursday, the twenty-eighth day of December, nineteen hundred and five, he served personally upon Anna Valantina, above named, the annexed notice of motion, statement, reasons, and affidavit, by delivering a true copy of the same to said Anna Valantina at the common jail of the county of Bergen, New Jersey, at Hackensack in said county, and at the same time making known to her the contents thereof. And deponent further says that on the same date above mentioned, to wit, the twenty-eighth day of December, nineteen hundred and five, at the city of Newark, county of Essex and State of New Jersey, he served personally upon James M. Trimble, Esquire, the attorney of said Anna Valantina, the annexed notice of motion, statement, reasons, and affidavit, by delivering a true copy of the same to said James M. Trimble, and at the same time making known to him the contents thereof.

HERVEY S. MOORE.

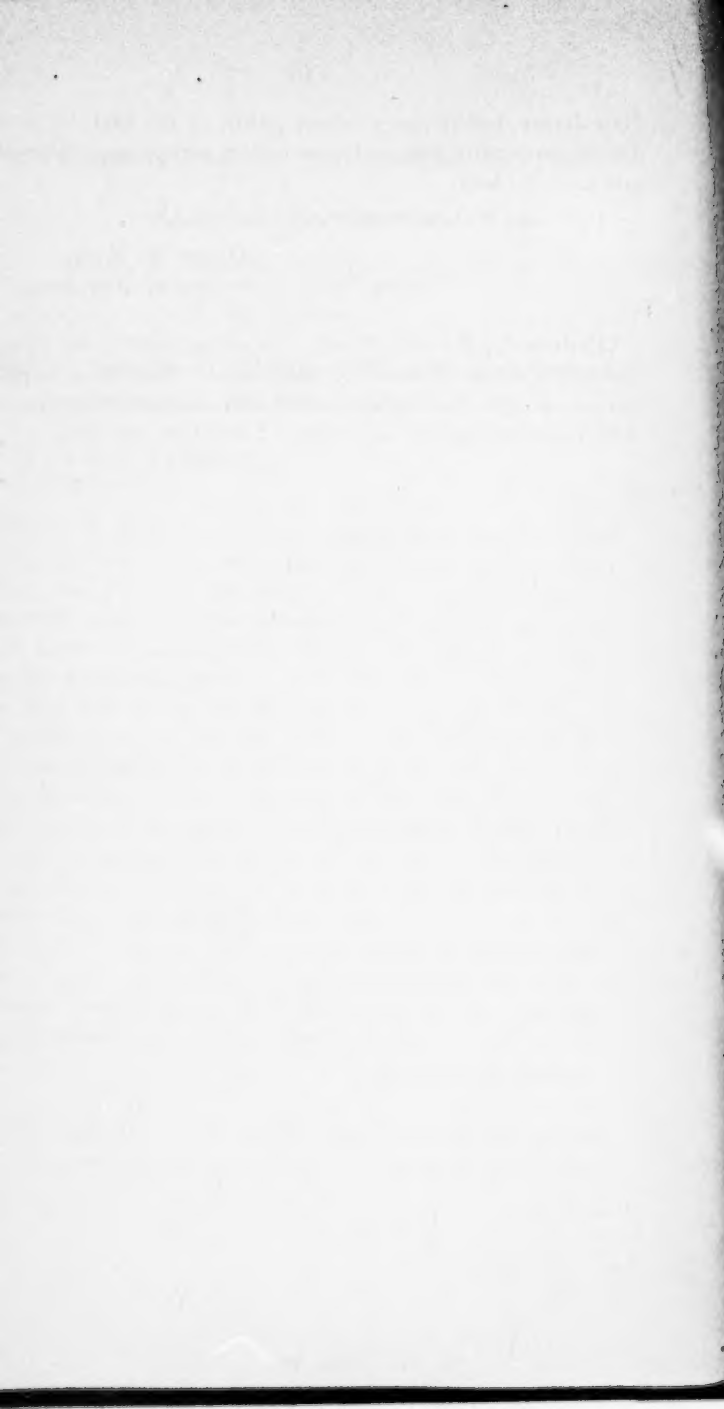
Subscribed and sworn to this twenty-ninth day of December, nineteen hundred and five, at Trenton, Mercer county,

New Jersey, before me, a notary public of the State of New Jersey, duly commissioned and sworn, as witness my hand and notarial seal.

[Seal Owen W. Kite, Notary Public, New Jersey.]

OWEN W. KITE,
Notary Public of the State of New Jersey.

[Endorsed:] File No. 19,906. Supreme Court U. S. October term, 1905. Term No. 404. Anna Valentina, appellant, vs. James W. Mercer, sheriff, &c. Motion to advance, with notice and proof of service. Filed Dec. 30, 1905.



The constitutional question was raised in the Court of Errors and Appeals by the Assignments of Error annexed to the petition and contained on pages 80 to 85 of the record. The allegation is that the defendant was deprived of certain rights to which she was entitled by the law of the land. This is stated in varying forms through twenty-five assignments.

It is so well settled as to be considered elementary law that the term "by the law of the land" means "due process of law."

Amer. and Eng. Encyc. of Law, 2d Ed., Vol. 10, p. 290.

Judge Harlan in *Hurtads vs. California*, 110 U. S., 543.

SUPREME COURT OF THE UNITED STATES.

ANNA VALENTINA, APPELLANT,

vs.

JAMES W. MERCER, SHERIFF OF BERGEN COUNTY,
NEW JERSEY, RESPONDENT.

ON APPEAL. BRIEF.

SYNOPSIS OF EVENTS.

ANNA VALENTINA was indicted by the grand jury of the County of Bergen, State of New Jersey, April Term, 1904 (p. 75) for the murder, on March the 10th, 1904, of Rosa Salza.

She was arraigned on the indictment in the Bergen Oyer and Terminer, April 11th, 1904, and pleaded not guilty, and counsel was assigned her by the Court (p. 6). Two days later, April 13th, 1904, she was put upon her trial (p. 27). Verdict was that she was guilty of murder in the First Degree (p. 75). Three days later, April 16, 1904, she was sentenced to be hung May 19th, 1904 (p. 6).

A petition to the Court of Pardons of New Jersey for commutation of the sentence of death (p. 7) was prepared and presented by her former counsel. A Writ of Error was issued by JAMES M. TRIMBLE out of the highest Court of New Jersey, the Court of Errors and Appeals (p. 78).

Errors were duly assigned (pp. 80-85) thereon and were duly overruled (71 N. J. Law Rep., 552). And appellant was again sentenced to death April 4th, 1905 (p. 5) to be hanged May 12th, 1905.

A petition for a writ of Habeas Corpus was presented to the Circuit Court of the United States for the District of New Jersey (p. 1).

The writ of Habeas Corpus was refused May 9th, 1905, by Honorable W. M. MANNING, Judge (p. 86).

From this refusal an appeal was taken and allowed by Judge MANNING (p. 88).

CLAIMS OF APPELLANT.

Appellant claims that the State of New Jersey is about to deprive her, Anna Valentina, of her life without due process of law, and that it denies to her the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States, and of Article III of the Treaty between the United States of America and the Kingdom of Italy (page 11).

Under the Constitution of the State, and the treaty of the United States with Italy, she was entitled to "a trial by an impartial jury."

Art. I, Subdivision 8, N. J. Constitution.

Appellant claims that the *extraordinary proceeding*, which resulted in her conviction and sentence to death, did not constitute a trial by jury in any proper or legal meaning of that term, because a trial by jury is a judicial proceeding wherein, on a plea of *not guilty*, there is, in theory of law at least, the possibility of an acquittal, and the question of the defendant's guilt or innocence of *any* crime embraced in the Indictment, is submitted to the jury, who, *after* determining *that* question against defendant, are authorized, and then only to determine the *grade* of the offence (N. J. P. L. 1898, pp. 824-825), whereas, in this case, the question of the guilt of defendant was settled for them, and all that was submitted by counsel for the defense and by the Court to the jury was, the question of what degree of the crime of murder was the defendant guilty of.

In support of this allegation we shall show :

First. That the counsel for the defence (selected and appointed by the Court) conceived of the proceedings as a mere inquiry to determine the degree of the crime of which appellant was guilty, and so told the jury in his opening for the defence.

Second. That this erroneous conception of counsel as to the object and purpose of the proceeding, was not only not dissented from or corrected by the Court, but was commended and adopted by it in its charge to the jury.

Third. That the only question actually submitted by the

Court to the jury to decide was, whether this defendant was guilty of murder in the first degree, the Court adding, that, if not guilty of murder in the first degree, then by the *admitted facts*, she was guilty of murder in the second degree, and it was the jury's duty to say so.

We submit that a mere inquiry to determine the degree of crime is not a trial.

No 77 164
People vs. ~~Mora~~, 20 Cal., ~~124~~

We claim that to submit to a jury the question of a person's guilt of murder in the first degree without submitting the possibility of acquittal of any degree; to submit to the jury only alternative propositions of guilt in one degree or other is not a *trial*, because the plea of not guilty is belied, and there is no issue for the defendant, and consequently the proceeding is not a *trial*. And we assert that such a proceeding is unknown to the Common Law and is not authorized by any statute of the State of New Jersey at the present time.

Section 68 of the Criminal Procedure Act 1874, which was considered by this Court in the case of Hallenger vs. Davis, 146 U. S., 314, and which formerly authorized the Court to accept a *plea of guilty* of murder and then to proceed by the examination of witnesses to determine the degree of the crime was abolished by the amendment to the Criminal Procedure Act, March, 1893, and such a provision does not form any part of the present act.

Rev., 1898; P. L., 1898; P. 825.

It follows, therefore, that the appellant did not have a trial as guaranteed to her by the Constitution of New Jersey, by the Fourteenth Amendment of the Constitution of the United States, and by the treaty with her country; and that the Court had no jurisdiction to entertain such a proceeding, give judgment thereon, and sentence to death.

II.

It appears from the record that this appellant spoke Italian, and that, in these proceedings, miscalled her trial, she was examined through an interpreter. It necessarily appears,

therefore, by a fair and reasonable inference, that she did not understand English. It also appears negatively, from the record, that nothing that was said in English by witnesses or her counsel against her, was translated to her.

We claim, that the failure to make known to her the proceedings at her trial, was a violation of the Constitutional requirements that she be informed of the nature and cause of the accusation and that she be confronted with the witnesses against her. But, above all, we claim, that when the Court of Errors and Appeals of the State of New Jersey in reviewing her case (71 N. J. Law Rep., 552) ignores these facts and imputes to her the same necessity of making requests to contradict and correct unproved material statements made in the course of the trial against her, as though she understood and spoke the English language; that said Court discriminates against her and denies her the equal protection of the laws.

III.

We are not here to correct mere errors of law, but to invoke the protection of Constitutional guarantees, which have been ignored and rejected by the State of New Jersey, through its tribunals, and without which their judgments are valueless as violating that higher law of which this Court is the guarantor.

If we sustain our contention the remedy in this Court by Habeas Corpus appears to be ample.

An unconstitutional conviction and punishment under a valid law is as violative of a person's constitutional rights as a conviction and punishment under an unconstitutional law.

The rule is well established that the Writ of Habeas Corpus cannot be used as a mere writ of error. But to deny a prisoner a constitutional right is not mere error in law, and where the record presents such a case the party is entitled to be discharged from imprisonment.

In re Nielson, 131 U. S., 184; 9 Sup. Ct. Rep., 672.

The question *In Re Converse* was whether petitioner had been denied equal protection of the laws. The Court *concedes* that an unconstitutional conviction and punishment under a valid law would be as violative of a person's constitutional

rights as a conviction and punishment under an unconstitutional law (*In Re Converse*, 137 U. S. P., 24; 2 Sup. Ct. Rep., 193).

POINT I.

The proceedings which resulted in appellant's sentence to death was not a trial at Common Law or a proceeding authorized by statute. It was a mere inquiry to determine the degree of murder of which defendant was guilty; it being assumed, certainly by counsel, and apparently by the Court, that at some time anterior to the trial, to wit, at her arraignment, said Anna Valentina "had confessed to the commission of this crime" (of which there was no proof before the Court and jury) and that all that remained for the jury was to determine what degree of murder she was guilty of. This is evident from the opening of counsel for the defense, from the certificate of the Presiding Justice, and from the charge of the Court.

It is unquestionable that counsel for the defense understood and conceived of the proceedings as a mere inquiry, because he so told the jury in his opening.

First. As to the statement of defendant's counsel to the jury.

"This defendant *when arraigned in open Court made confession of the commission of this crime, and you, gentlemen of the jury, from the evidence that has been produced on the part of the State, and which shall be offered on the part of the defense, will simply have to determine what the degree of guilt shall be,*" that is, as he proceeds to further explain, their verdict will be murder in the *first or second degree* (p. 59).

As a further illustration of the condition of counsel's mind upon this question perhaps we may refer to the statement made in his petition to the Court of Pardons of New Jersey, to wit, "Your petitioner further shows that when arraigned before the Court to plead to the indictment found against her, she pleaded guilty, but, under the direction of the Court, a plea of not guilty was entered so that evidence might be taken for the purpose of determining the degree of guilt" (p. 7). The

utter illegality of this course does not appear to have struck counsel for the defendant. The expression "Confession in open Court" and "determine the degree of guilt" would appear to have been taken from Section 68 of the Act for the Punishment of Crimes, Approved March 22, 1878, Rev. 1874, p. 239, which provided "if such person (*i. e.* one indicted for murder) shall be convicted on confessions in open Court, the Court shall proceed by examining the witnesses to determine the degree of crime." But that provision of the Criminal Law of New Jersey was not the law of the State at the time of this trial. Rev. of 1898, the Crimes Act, Public Laws 1898, page 825.

Second. The certificate of the Presiding Justice also shows that counsel was laboring under this misconception, because it certifies that counsel for the defendant, in closing, "*conceded* that the evidence showed the defendant to be guilty of murder in the second degree, but insisted that she should not be found guilty of murder in the first degree" (p. 68).

That counsel acted upon this misconception and interposed no defense, claimed the benefit of no presumption, prayed no exception, is evident from the record.

Third. Not only did the Court fail to correct this erroneous impression of counsel for defendant, but, in submitting the question to be determined the Presiding Justice apparently approved and adopted this mistaken view of counsel, because the Justice said: "The only *question left for your consideration* is whether it is murder in the first degree or murder in the second degree, and so the learned counsel for the defendant *frankly and properly stated* in his opening and in his closing address before you" (p. 70).

Again the Court says: "It is admitted, for reasons already mentioned, that defendant is guilty of murder in the second degree" (p. 70).

Again the Court says: "From all this it results, as a necessary *conclusion of law* upon the admitted facts in this case, that the defendant is guilty of the crime of murder."

Three times the Judge tells the jury that by admission, or by admitted facts, she is guilty of murder. Twice he tells them that reasonable doubt only applies to the question of whether she is guilty of murder in the first degree or not.

SUPPLEMENTAL LEAF BETWEEN PAGES 6 AND 7 OF APPELLANT'S BRIEF

Let us reflect for a moment on the extraordinary proposition contained in these quotations from the judge's charge. "In this case it is admitted * * * that the defendant is guilty of murder in the second degree, and *that* will be your verdict, unless the evidence has satisfied you, etc." The jury is directed to consider the evidence, but if on the evidence they fail to find the defendant guilty of murder in the first degree, then "by the admitted facts" she is guilty of murder in the second degree, and "*that* will be your verdict," or, as it is put subsequently, "it will be your duty to say so."

That is to say in effect, if the evidence fails to satisfy the jury of this defendant's guilt of murder in the highest degree, then their discretion ceases; they are bound by "the admitted facts;" they become a mere machine to register and repeat what had already been decided upon by counsel and Court.

Even if the evidence convinced the jury that the right verdict would be an acquittal on the ground of self-defense, as defendant claims in her testimony, or manslaughter, yet they could not return such a verdict, because of the instruction of the Court. And they are placed in this position by the Court in the face of a statute which says in so many words, there shall be no distinction of treatment between those who offer to plead guilty of murder, and those who strenuously maintain their innocence.

EXPERIMENTAL LEAD BETWEEN PAGES 6 AND 7

THE REBELLY / FIRST

And again, in closing his charge, the Court said: "If she did, she is guilty of murder in the first degree, and it is your duty to say so by your verdict. If not, then on the admitted facts of the case, she is guilty of murder in the second degree, and it is your duty to say so in your verdict" (p. 75).

By this peremptory direction the Court estops the defendant from the benefit of her plea of "not guilty," from the possibility of an acquittal, and presents to the jury simply an alternative of verdicts of guilty.

Where is there any authority of law for the exercise of the Court of such power as this?

Certainly it cannot be said that there is any authority for the procedure followed in this case in the language of the existing statute. By the Amendment of March 1, 1893, it was enacted: "If, upon arraignment, such plea of guilty shall be offered, it shall be disregarded, and a plea of not guilty entered, and a jury impanelled shall try the case in manner aforesaid.

On the contrary, the peremptory direction to the jury that they must find the defendant guilty of murder in one degree or the other, was a plain violation of the specific terms of the present statute, because that statute says that the jury shall designate by their verdict whether it shall be murder in the first or second degree, *if they* find such person guilty."

Revised Statutes, page 1100, Sec. 271.

Revision 1898, P. L. 1898, pages 824 and 825. By this Amendment it has been held that the Common Law right of confession in open Court of a crime of murder was abolished, and the statute substituted for the advice of the Judge the mandate of the law that the citizen shall not be adjudged to death upon his own confession, but that *in favorem vitae* the State shall prove in all respects to the satisfaction of a jury the crime laid in the indictment.

State vs. Genz, 28 Vr., 463.

By this statute all cases of murder were put on the same plane. The same plea was fitted to all cases and the same procedure required in every instance. No power was given to the Court to differentiate cases of murder one from the other: no power to distinguish between cases where the

accused offered a plea of guilty or where the plea of not guilty was pleaded as usual. In both cases the accused stands in exactly the same position before the Court. All defences are available in the one case as in the other (insanity, self defense, alibi, &c.), and with the same result equally open to one as to the other, to wit, acquittal, manslaughter or murder in the second or first degree. In this case counsel for defense withheld, and the Court excluded all of the above possibilities except conviction—conviction of murder in one or the other degree. If this is possible in this case it is possible in any case of murder when the Judge sees fit, and it is therefore tantamount to the absolute abolition of trial by jury.

Nor is there any such power in the Judge at common law.

The plea of not guilty traversed every material fact alleged in the indictment.

3 Greenleaf Evidence, Part 5, Sec. 12.

Under the indictment of this case there could have been a conviction of any grade of manslaughter established by the evidence, and the defendant could only be convicted of that degree of crime which the evidence established beyond reasonable doubt.

Charge of Judge Magie in *Wilson vs. State*, 31 Vr., p. 172.

This is merely declaratory of the Common Law.

Roscoe's Criminal Evidence, p. 82.

Appellant was entitled to the presumption of innocence and reasonable doubt on the whole case, and not on a part thereof.

3 Greenleaf Evidence, Part 5, Sec. 29.

In this case the application of reasonable doubt was limited by the Court to the question whether appellant was guilty of murder in the first degree (p. 70).

We have been unable to find any other case at Common Law, in which the Judge presiding at the trial arrogated to himself the power of instructing the jury that they must bring in a verdict of conviction, and conviction of one of the grades of murder.

Thirty years of the practice of law, in which the undersigned have heard innumerable criminal cases, we cannot recall a single instance where a Judge, amongst them that illustrious Judge the Hon. David A. Depue, deceased, ever failed to say to the jury, the guilt of the defendant must be proved beyond a reasonable doubt. Reasonable doubt implies the possibility of acquittal.

3 Greenleaf, Part 5, Sec. 29, 15 Edition, Notes,

So that when the Judge in this case limited the exercise of reasonable doubt to the first degree of murder, exclusively he prevented the jury from considering even in theory, the possibility of acquittal and deprived without sanction of law the proceeding of its most important and characteristic feature as a criminal trial. This is not mere error. This is arbitrary authority; and it matters not how plain the evidence may be the Court is not thereby justified in assuming a disputed fact.

Wells' Questions of Law and Fact, Chap. 10, Sec. 466.

The foregoing conspicuous features of this case differentiate it from all others that we have known. We are not endeavoring to present isolated errors of law. We contend that, viewed as an entirety, the actions of counsel and of Court form a harmonious whole dovetailed into each other—one and inseparable:—and from the opening of counsel for the defence, to the close of the Court's charge, they constitute a course of procedure in a capital case for which there is no authority of law. We know of no precedent where on a plea of not guilty in a case of murder the Presiding Judge has presented to the jury only alternatives of conviction, absolutely withdrawing the possibility of any acquittal.

It is stated in the decision of this case by the Court of Errors and Appeals of the State of New Jersey, 71 N. J. Law Reports, 533, that the chief complaint made on the Writ of Error sued out of that Court on behalf of the present appellant, "was that, at the trial, it was assumed by her counsel, the Court, and the jury, that she was guilty of murder, and that that allegation was far from the truth."

It is submitted that the allegation of the appellant is borne out by the record of the case.

In the first place the chief point in that Court, as we have striven to make it here, was not the assumption of appellant's guilt by anybody; that was a mere incident, a necessary sequence of the illegal course of procedure adopted. The main point was and is, that the entire course of procedure adopted at this alleged trial was arbitrary, unjust and without authority of law.

In the second place it is submitted that the statements of counsel and of the Court in the conduct of the case, bear out the appellant's allegation.

Did not counsel for the defence "assume" the guilt of his client of murder when he told the jury in his opening for the defence, page 59, before his client had been sworn, that the only question for them to determine, was what the degree of guilt should be, whether it should be murder in the first or murder in the second degree? Did not that remark necessarily imply her guilt of some degree of murder? And when he avowedly based this statement, not on testimony which had already been given at the trial, but on something not proven, something he alleged to have taken place several days before, some unproved confession of the commission of this crime, did he not "assume" the guilt of his client?

When the Judge charged the jury that it (p. 59) "results as a necessary conclusion of law upon the admitted facts in this case that the defendant was guilty of the crime of murder," and when he told the jury at the end of his charge (p. 75) "that on the admitted facts of the case she is guilty of murder in the second degree, and it is your duty to say that by your verdict," did he not "assume" her guilty of murder? He assumed her guilty of murder, because he had no authority to find the fact; that finding was exclusively within the province of the jury. He assumed it, because he expressly adopts the assumption of counsel in the latter's opening address. "And the only question left open for your consideration (the jury) is whether it is murder in the first degree or murder in the second degree. And so the learned counsel for the defendant frankly and properly stated in his opening and in his closing address before you." And when the jury assumed the function of determining the mere grade of the offence, as they had been instructed by both counsel and Court to do, did they not assume as a postulate her guilt of the crime of murder?

We did not mean to say, nor do we mean to be understood as saying that there was not evidence in the case, after defendant had been sworn, from which the crime of murder might have been inferred. But we do mean to be understood, however, as saying, that there is no evidence in the case, in our opinion, which necessarily justifies a verdict of *wilful, deliberate and premeditated* murder. The merits of that controversy are not before this Court. Guilty or not guilty, she is equally entitled to a trial by the law of the land. The uncontradicted evidence of the appellant, however, shows that she entered the home of the deceased, at the deceased's invitation, unarmed and with "peace in her heart;" that deceased met her with abuse and threats; that a quarrel ensued, in which she wrested the knife from deceased and "a veil fell before her eyes," and she killed her tormentor. Certainly not necessarily a case of murder in the first degree. 'It was a crime of impulse by great provocation, in no sense proved to have been premeditated and utterly without that appreciable space of time which is essential to wilful and premeditated murder.

State vs. Bonofiglio, 67 N. J. Law Reports, 244.

No matter what the guilt may be, no matter what the horror which the deed may be excited in us, no matter what the evidence may lead us to think, the accused is yet entitled to be tried by the law of the land.

POINT II.

4th, 5th and 7th Assignments.

When defendant's counsel told the jury that "this defendant, when arraigned in open Court, made confession of the commission of this crime," he must have referred, if to anything at all, to something *dehors* the record, for there is no such confession in the record, nor any testimony of any such confession ever having been made to anyone.

[The record of the arraignment is found on page 6, and took place on the 11th of April, 1904, the alleged trial taking place on the 13th (p. 27).] *Non-apparet non-constat.*

Counsel, therefore, had no right to refer to it. Having done so, however, what became the duty of the Court in re-

spect to it? Here is an unsworn statement of fact, presented to the jury in the guise of an opening in a capital case, which is prejudicial, if not fatal, to defendant's case; an admission against her interest that is unnecessary, and unsupported in the evidence. We submit that it became the duty of the Court *ex debito judicis*, to correct this uncalled for misstatement of counsel, and to recall the unfounded admission from the consideration of the jury. If the Court failed, to do this; if, as in this case, the Court not only failed to correct the misstatement, but endorsed it, adopted it, and impressed it upon the jury, by complimenting the counsel on the course that he pursued (p. 70), then, we submit, it becomes not only assignable error, but a violation of Constitutional rights as well.

In answer to this position the Court of Errors and Appeals of New Jersey has replied, partly, as follows: "I know of no rule either at the Common Law or created by statute which required the Judge presiding at a criminal trial to restrain the defendant's counsel from making such admission as to the guilt of his client as he may think proper."

The appellant submits that this is a most extraordinary statement—extraordinary, first, because it observes no distinction between an ordinary criminal and a capital case. It treats them as synonymous terms, whereas there is a world of difference between all other criminal trials and a capital case.

[It must not be forgotten that this defendant did not speak or understand the language in which these proceedings were carried on; that she stood silent and helpless in this courtroom, unappreciative of all that took place, with the question of life and death absolutely confided to her counsel and Court.] We say, that this statement of the Court of Errors is extraordinary in another particular. It is submitted that said statement is not a correct exposition of the Common Law, and we desire to contrast it with a decision of an Illinois case on a similar question of permitting an unsworn statement to go to the jury as evidence. "In capital cases," says that Court, "every feeling of humanity as well as the principles of justice, require that the accused should have a fair and impartial trial. In such trials the essential forms of the law adopted and adhered to for the purpose of protecting the citizen in his rights, must be observed. And one of those re-

quirements coeval with the Common Law itself is that the people's witnesses in all criminal proceedings must be sworn before they can give testimony. To permit bystanders to give testimony not under the sanction of an oath, is not only contrary to our sense of justice in any case, but the mind is shocked when such evidence is given against the accused in a capital case. Human life cannot be sported with in this manner. To permit it would be to place the life of the accused at the mercy of the unscrupulous actuated by we know not what feelings of prejudice, passion or malignity, without the fear of punishment in this life or in the future of the crime of perjury. Such evidence has never been, and, we presume, never will be sanctioned by the laws of a civilized and Christian people.

"It may be urged that this testimony was unimportant, and could not have worked any injury to the plaintiff in error. Who can say what influence it may have had upon the mind of the jury? We presume neither they nor any one else could tell.

"It may be urged that the error was waived, inasmuch as the statement was not objected to by the accused. It is an ancient maxim of the law that in capital cases the accused stands upon all his rights, and waives nothing. He then could not be prejudiced by *failing to object* to the introduction of this evidence. And the same may be said as an answer to the fact that he did not move to have it excluded from the jury. It is the province of the Judge trying the accused to see that he has a fair and impartial trial, and if within his power he should have prevented the statement from being made, and if that could not be done, then he should have, on his own motion, excluded it from the jury."

Dempsey, Jr., vs. The People, 47 Illinois, 324.

Contract with this the Syllabus of the N. J. decision.

"If at the trial of a person for murder the counsel of the defendant in opening the defence, states to the jury that the defendant when arraigned in open Court, made confession of the commission of the crime, it is not error for the Court to refrain from contradicting the statement when such a conviction is not requested."

According to the Illinois decision, the accused in a murder case waives no rights by silence; a request is unnecessary; the duty of protecting his rights is inherent in the judicial office itself. According to the New Jersey decision in this case the accused in a murder trial waives what he does not claim, and a request must precede the interference on his behalf of the Court, even though the accused does not understand the English language.

The Illinois case refers to an unsworn statement of a bystander permitted to go to the jury in a murder case. This case refers to the unsworn statement of the attorney that his client had confessed to the commission of murder. It is infinitely stronger than the Illinois case. It has been decided by the Supreme Court of New Jersey that the present law, N. J. Rev., 1898, Criminal Act, Public Laws 1898, page 825, has abolished what Chief-Justice BEASLEY called the common law right of confession of murder.

State vs. Genz, 28 Vr., 459.

Now, here is an agent, an attorney, permitted by the Court to do what his principal could not, from reasons of public policy, do herself. This cannot be. The fountain can rise no higher than its source; and certainly a confession of the commission of murder which she is prohibited by law from making is beyond the scope of authority of her agent to admit; and when he traveled beyond the scope of his authority the Court ought to have interposed and stopped him. In this same connection the opinion of the Court of Errors goes on: "I know of no authority possessed by this Court sitting in review to animadvert on the discretion which the trial Court, if not *asked* to interpose, might exercise on such an occasion. The only authority given by the statute for such a review is when the defendant in a criminal trial has suffered manifest wrong in the denial of any matter by the Court which was a matter of discretion."

P. L. 1898, p. 915, Sec. 136.

"In this statute denial implies request, and in the trial now under consideration nothing was requested and hence nothing was denied." So that, as we understand this decision of the Court of Errors and Appeals, the defendant (Appellant here)

should have requested the Presiding Judge to have contradicted the unwarranted statement of her counsel in his opening to the jury; otherwise the appellate tribunal cannot help her. This woman who did not understand what her counsel said; this woman who was examined through an interpreter; to whom, as the record shows, the interpreter translated nothing but the questions that were asked her, ought to have requested the Presiding Judge to correct what she did not understand, and not having done so, she must undergo her sentence to death! Here is a Court which insists on the *deaf* hearing, and the dumb speaking. This is not error: this is a denial of the fundamental principles of justice. *Contrast with this Gardner v. People 106 Ill. 4. 76*

She is placed in the same position as an American citizen would be placed if, travelling in some foreign country whose language he did not understand, he were to be defended by some local attorney who, in the course of legal proceedings conducted in a foreign tongue, were to make unwarranted and highly prejudicial admissions of whose purport the prisoner, on trial for his life, were wholly ignorant. Would not the defendant, in such case, be warranted in invoking the aid and interposition of the American government?

If it be said that this decision of New Jersey Court of Errors and Appeals, no matter how inconsistent it may be with the Common Law as expounded elsewhere, is binding upon this appellant, because she is a resident of New Jersey, and this is an authoritative exposition of the Common Law of the State by its highest tribunal; the answer is obvious. It is not binding upon her, because it is inconsistent with the principles of human justice.

If it be accepted as law in New Jersey, that the Court may without error refrain from contradicting or correcting the unproved statement of counsel for the defense, that his client has previously confessed the commission of this crime, unless the accused requests the Court to make such contradiction, then common sense and common justice thrusts upon the Presiding Justice another duty when the accused is a foreigner, speaking no English.

And in this case and all such cases, it became, and was the duty of the Court when this astounding admission was made, to have turned to the interpreter and directed him to translate

to the accused the statement of her counsel; PERHAPS THEN, after she fully understood the fatal import of what her counsel had told the jury, if she did not make such a request, the Court might properly refrain from interfering. Certainly not before.

Point III.

The Constitution of New Jersey provides that the accused shall be informed of the nature and cause of the accusation and shall be confronted with the witnesses against him (Art. 1, Subdiv. 8). It is submitted that "confronted" does not mean merely bodily presence; that the barrier of language is quite as great as the barrier of distance; and that in cases like the present one, where a foreigner, not speaking English, is on trial, this Constitutional provision is not satisfied, unless the testimony and proceedings are translated to the accused. An examination of the record will show that nothing was translated to this defendant, except specific questions.

When appellant was arraigned and when sentenced, the record does not show the presence of the interpreter and translation of the indictment and sentence (pages 5 and 6). We claim that the record should show *affirmatively* both these facts in each instance, and failing to do so, that it is fatally defective.

Nothing shows that she was present when verdict was rendered (p. 75). This is necessary.

Dougherty vs. Cour, 69 Pa. St., 286.

It further appears from the record that no testimony was translated to this accused; that the opening statement of her attorney (page 59), concerning which so much has been said, was not translated to her. The record must show affirmatively the presence of the accused at the trial and when the verdict is received and sentence pronounced (see cases quoted in *Dil-*
Cooley's ~~Constitutional~~ *Constitutional Limitations*, Notes, 7th Edition, page 457. Subject: Confrontation. Dougherty against Commonwealth, 69 Pennsylvania, 286). And if confrontation consists of something more than physical presence; if it involves, as we claim it does, the presence of the *mind* as well as the *body*, then we

SUPPLEMENTAL LEAF TO PAGE 16, AT CLOSE OF POINT II.

But whatever may be said as to the duty of the judge to have contradicted the unproved statement of alleged fact made by counsel for the defense in his opening [page 59] ^{or} to have called defendant's attention to the same through an interpreter, that after all is not the main point.

A trial is predicated upon sworn testimony, as the Illinois decision referred to, ~~says:~~ *holds*,

The counsel for the defense had no right to make this ~~un-~~ ^{un-}proved statement of alleged fact, to wit, that his client a few days previously "had confessed the commission of this crime."

A fortiori the judge had no right to use this unwarranted and unproved statement of alleged fact *as a binding admission* against defendant, controlling the jury in their deliberations that she was guilty of murder, to wit, of murder in the second degree.

That the judge did use this statement as such an admission is evident from the quotations from his charge contained in this brief on page 6 under third.

It has been contended, and probably will be here, that I am mistaken in this assertion, and that when the Court used the expressions "admitted facts," "it is admitted," in his charge [pages 70, 75] these expressions referred only to the *evidence* adduced in Court, and did not refer to the unproved statements of counsel for the defense.

This is not so. It is obvious that when he used these phrases, "admitted facts," "it is admitted," he referred to something *outside the evidence*, and that something could only be the unwarranted and mistaken admission of counsel. The Court

draws a plain distinction between evidence and what he calls "admitted facts." He says in one place [page 70], "It is admitted * * * that the defendant is guilty of murder in the second degree, and *that will be your verdict*, unless the *evidence* has satisfied you beyond a reasonable doubt that the defendant intended to take Rosa Salza's life, etc."

Here one term, "it is admitted," is contrasted with the other, "evidence." Nothing could be plainer than that he used them as referring to distinct matters having distinct consequences. He maintains the same distinction between "evidence" and "admitted facts" in his very last words, referring to the fact that if the *evidence* satisfies the jury of certain facts that then defendant is guilty of murder in the first degree [page 75]; "if not then on *the admitted facts* of the case she is guilty of murder in the second degree, and it is your duty to say that by your verdict."

He adopts the unwarranted admission of counsel, and says [pages 69, 70]: "It results as a necessary conclusion of law upon the *admitted facts* in this case that the defendant is guilty of the crime of murder, and the only question left for your consideration is whether it is murder in the first degree or murder in the second degree. And *so* the learned counsel for the defendant frankly and properly stated in his *opening* and in his closing address before you."

What the "learned counsel" said in his opening address was inconsistent from my point of view with the duty of counsel. It was a statement of a confession of crime which the accused did not understand, which was not made known to her, against which she could not possibly protest, which was unproved and which I do not hesitate to say was never made. Speaking Italian as I do, familiar as I am with this defendant's story, I have no doubt that what is called "a confession of this crime" is a misinterpretation put upon her broken English when she delivered herself up at the prison immediately after committing the deed, or at her arraign-

ment, at which it does not appear that an interpreter was present.

The adoption of this illegal admission of counsel by the Court, as aforesaid, distinguishes this alleged trial from all precedent. It stands alone; it is unique; and when these facts are considered together with the other fact of such vast importance, to wit, that as a consequence of this illegal admission of counsel the judge excluded from the consideration of the jury the possibility of acquittal, and directed the jury peremptorily to one of two alternatives, it seems to me that I am justified in saying that these proceedings do not constitute a trial in the constitutional sense, that no verdict of a jury can condone it; that here is denial of fundamental right; that here is a case where the principles laid down by this Court in *Caldwell vs. Texas*, 137 U. S., 697, applies, to wit: "That no State can deprive particular persons of equal and impartial justice under the law. The power of the State * * * can not be sustained when special, partial and arbitrary." *The reasons of*

The decision of the New Jersey Court of Errors and Appeals in this case are not directly involved in this appeal, and ~~has been~~ referred to only to satisfy a rational curiosity; *but* and right here I desire to point out how that Court has misapprehended this point.

In the quotation hereinbefore made from that decision [page 12 of this brief] the judge has failed to perceive that the most serious feature of this misstatement of counsel was not the failure of the Court to contradict it, but its use, as I have set forth, by the Court to fasten conviction upon the defendant.

submit that it is quite as important that the record should affirmatively show that the proceedings and material parts of the testimony were made known by translation to the accused.

The object of requiring the prosecution to confront accused with the witnesses against him is not alone to enable him to view the witnesses while the latter are giving their testimony, but also, and chiefly, to acquaint the accused with the character of the testimony whereon a conviction is sought by the State. It is submitted that the object of this constitutional requirement is wholly defeated where the trial is so conducted that the accused is kept in ignorance of the testimony against him. And where the testimony is given and all the proceedings are conducted in a language with which the accused is wholly unfamiliar, as in this case, the defendant is placed in a position similar to that which she would occupy if the Court had permitted her to see but not to hear the witnesses upon the stand.

Suppose that the defendant in a capital case were placed, during the trial, in a compartment within the court-room wherein a glass door or partition enabled him to see all the witnesses but excluded all sound of their voices. Could he be said to have been confronted with the witnesses against him? And where a barrier of language instead of one of glass or wood is interposed between the witnesses and the accused, is the latter not as effectually shut out, in the one case as in the other, from the benefit of the Constitutional provision requiring the State to confront him with its witnesses?

Conclusion.

If the appellant ever offered to plead guilty of murder, of which there is no evidence, two courses lay open to the Court and prosecutor, either to accept the plea, in which case it would be entered as a plea of *non vult* of murder in the second degree, and the accused rendered liable to thirty years imprisonment, or to refuse to accept it, in which case a plea of "*not guilty*" would be entered in all its fullness and entirety, without distinction or difference, opening the full range of possibilities from acquittal to death, which the plea of "*not guilty*" has

afforded heretofore to every prisoner on trial for murder. But neither one of these two courses was followed in this case. Instead, a third course was followed, which has, we contend, no sanction either in the statutes of the State or the Common Law, and is absolutely without precedent.

The formal plea of not guilty was entered for her, but Court and counsel curtailed and cut down its benefits. They held the accused down; they nailed her fast, so to speak, as though she had pleaded guilty of murder in the second degree; there was no escape for her from that—counsel and Court agreed on that—but the Court, while holding her fast, left the State free to pursue her for a still higher degree of crime. This was not a trial. It was the exercise of mere arbitrary power; and law is something more than mere will exerted as an act of power. It must not be a special rule for a particular case (*Hurtado vs. Cal.*, 110 U. S., 535 §). To illustrate the difference between appellant's case and the class of cases in which this Court has refused to act, let us take *Crossley vs. the State of California* (18 Sup. Ct. Rep., 242).

"Two grounds were relied on as justifying the issue of the writ:

"First: That there was no evidence that he was guilty of murder in the first degree; that the evidence showed or tended to show, that he was guilty at most of murder in the second degree; that the Trial Court only submitted to the jury the question as to whether *or not* he was guilty of murder in the first degree. This was matter of error and with its disposition by the highest tribunal of the State, it was not within the province of the Circuit Court to interfere."

There the Trial Court narrowed the issue down to murder in the first degree, "*whether or not*" he was guilty of murder in the first degree; but the possibility of acquittal remained to the defendant; the issue was narrow, but acquittal was possible. But in the *Valentina* case there was no "whether or not." No possibility of acquittal was left the defendant; no issue was left to her; alternate degrees of *guilt* were alone submitted to the jury. She must be found guilty of this or guilty of that. Such a proceeding is no trial. For a trial must always contain in theory at least the possibility of acquittal. There is no comparison between the *Crossley* case and this.

We admit that the State has full control over the procedure in its Courts *subject only* to the qualifications that such procedure must not work a denial of fundamental rights, or conflict with specific and applicable provisions of the Federal Constitution (Brown vs. N. J., 175 U. S., 172; 20 Sup. Ct. Rep., 78). But here is denial of fundamental rights. Here is conflict with the specific and applicable provision of the Federal Constitution.

It is not alone the question of jurisdiction which may be inquired into in proceedings on Habeas Corpus.

Storti vs. Massachusetts, 22 Su. Ct. Rep., 73.

"Section 761, Revised Statute, provides as to Habeas Corpus cases that the Court, or Justice, or Judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.

"The command of the section is, 'to dispose of the party as law and justice require.' All the freedom of equity procedure is thus described; and substantial justice, promptly administered, is ever the rule in Habeas Corpus."

Storti vs. Massachusetts, 22 Sup. Ct. Rep., 73.

It is to the interest of the community that crime be punished. But in this case there is something greater than that, and that is the prevalence of law. It is of importance that the guilty shall not escape. It is of infinitely greater importance that no life shall be taken by the community except with strict conformity to the law of the land.

We ask, therefore, that the petition be granted that a writ of Habeas Corpus issue in accordance with this prayer.

James W. Mercer
of Counsel with
Appellant

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JAMES H. WICKINLEY,

Clerk.

No. 404.

Supreme Court of the United States.

OCTOBER TERM, 1905.

ANNA VALENTINA,

Appellant,

vs.

**JAMES W. MERCER, Sheriff of Bergen
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*On Appeal from the
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**BRIEF OF THE ATTORNEY-GENERAL OF NEW
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BRIEF OF THE ATTORNEY-GENERAL OF NEW JERSEY FOR MERCER, SHERIFF.

This is an appeal, taken pursuant to Section 764 of the Revised Statutes of the United States, to this court from an order of the Circuit Court of the United States for the District of New Jersey, refusing to order the issuance of a writ of *habeas corpus*, a petition for which was presented to said Circuit Court pursuant to the provisions of Section 753 of the United States Revised Statutes. The order of the Circuit Court refusing the writ of *habeas corpus* is found on page 86 of the record, and reads:

"The writ applied for is denied because in my opinion it appears from the petition that the petitioner is not entitled thereto."

The grounds alleged in the petition as a basis for the issuance of the extraordinary writ of *hebeas corpus* are very general in character, and after reciting that the petitioner is, by an order of the Bergen County Court of Oyer and Terminer, confined in the jail of said county under sentence of death, charges that said order

"is illegal and contrary to the Fourteenth Amendment of the United States in this: That it has been made by the said Bergen County Court of Oyer and Terminer without due process of law, and that it deprives the said Anna Valentina of her liberty and life without due process of law, and denies to her the equal protection of the laws."

These averments are, of course, mere conclusions of law and not matters of fact, and of themselves amount to nothing in support of the application. *Kohl vs. Lehlbach*, 160 U. S. 293; *Cuddy's case*, 131 U. S. 280.

The petition further states in a most general way that the proceedings at the trial, resulting in her conviction,

"were without authority of law and null and void; that the question of her guilt or innocence of murder was not entertained by the Court or submitted to the jury as the law of the State of New Jersey expressly requires in all cases where parties are indicted for murder, but, on the contrary, evidence was taken in said court in said proceedings merely to determine the degree of her guilt; * * * that the evidence taken of said proceedings was limited to that purpose, and the alleged trial conducted with that sole object in view, your petitioner being assumed to be guilty of the crime of murder; * * * that said proceeding was entirely unwarranted by the law of New Jersey; * * * that said Anna Valentina was deprived of all benefit of the presumption of innocence and of reasonable doubt to which she was entitled by law, and that the questions of self-defense and manslaughter, fairly raised by her testimony, were excluded from the consideration of the jury, and the question submitted to them was

limited by the Court simply as to whether she was guilty of murder in the first degree or not, and the benefit of reasonable doubt was confined to that point;

* * * that after her said conviction a writ of error was sued out of the Court of Errors and Appeals, the highest tribunal of the State of New Jersey, * * * for the purpose of reviewing the record of said conviction and of obtaining a new trial for her on said indictment, but that said Court dismissed said writ and refused a new trial, and * * * ignored the foregoing point, although the same was raised as herein stated; * * * that her counsel stated to the jury in opening the case for the defense that the said Anna Valentina, when arraigned in open court, made confession of the commission of this crime, and that the verdict of the jury would be simply to determine what the degree of her guilt should be; * * * that it became and was the duty of the Court to have contradicted said statement and to have told the jury that there was no evidence of any such fact before them or to be considered by them, but, on the contrary, * * * the Court adopted this misstatement of counsel and commended and submitted it to the consideration of the jury; * * * that the Court of Errors and Appeals in passing upon this point * * * held that it did not become the duty of the Court at such trial to contradict such misstatement of fact on the part of the attorney of a defendant charged with murder, unless the defendant requested so to do, but * * * said defendant did not understand the English language and was not aware of what her counsel had told the jury, and could not make such a request of the Judge, it became the duty of the trial Court to have caused the interpreter to translate what counsel had said, but that said Court failed to do so; * * * that she is a subject of the King of Italy; that under the treaty between said country and the United States of America she is entitled to the same treatment as a citizen of the United States, * * * and that the said treaty has been violated in the case of said Anna Valentina; that said indictment is fatally defective and void under the

Constitution of New Jersey and the Constitution of the United States, because it does not set out the crime of which the said Anna Valentina was charged, or of any offense known to the criminal law of New Jersey, and is, therefore, not due process of law under the Fourteenth Amendment of the Constitution of the United States."

Annexed to the petition is a copy of the treaty between the United States and the kingdom of Italy, and sent up with the petition, and apparently made a part of it, although it does not expressly so appear, is a copy of the entire record, including the stenographic report of the evidence taken at the trial, the charge of the learned trial Judge to the jury, the evidence and judgment entered thereon, the writ of error from the New Jersey Court of Errors and Appeals to the trial court, and the assignments of error, some twenty-five in number. (*Case*, p. 80.)

The writ of error was elaborately argued and involved a consideration by the highest court of the State of New Jersey, not only of matters of law, to which exceptions might have been taken, but, under the practice obtaining in New Jersey (*P. L. 1898*, p. 915, sec. 136), the entire record of the proceedings was returned, whereby the reviewing court was required to examine such record and to determine whether or not on the trial the defendant

"suffered manifest wrong or injury, either in the admission or rejection of testimony, whether objection was made thereto or not, or in the charge of the Court, or in the denial of any matter by the Court, which was a matter of discretion, whether a bill of exceptions was settled, signed and sealed thereto, or error assigned thereon, or not."

By the express provisions of this beneficent statute the Appellate Court was required to "remedy such wrong or injury and give judgment accordingly."

The certificate of the presiding Judge, sending up the entire record, is found on page 75 of the case, and the opinion of the Court of Errors and Appeals affirming the judgment below in all respects, is found in *71 N. J. Law Rep.*, p. 552.

If the record be examined it will appear that the defendant pleaded "not guilty" to the indictment; that while the indictment was found on the 5th of April, 1904, and the defendant arraigned and counsel assigned on the same day, the trial was not commenced until the 13th of April, and lasted all of that day and a part of the next; that Milton Demarest, Esq., a highly respectable member of the Bar of the Supreme Court of New Jersey since the year 1877, was assigned by the Court to conduct her defense; that the evidence produced by the Prosecutor of the Pleas in a dignified and considerate manner showed the commission of a most brutal murder by the defendant, her victim being a woman, into whose room on the third floor of a neighboring house the defendant walked, after having broken down the door, and who received as many as fifteen wounds, from a sharp knife, in the side and back of her neck, besides numerous others on her breast and the back of her hands. The defendant testified in her own behalf as follows:

"Q. When you went in the door, where was Rosa (the deceased) when you got inside of the door?

"A. She was near by the door; she had a baby in one arm.

"Q. Then what did you say to her?

"A. I said to her, 'Rosa, don't call me all those bad names, because if it is not to-day, it may be to-morrow, that I am going to get with Mike again.'

"Q. Well, what did Rosa say then?

"A. 'I have got to break your face, and when my husband comes home to-night I will have to do a good many more things to you.'

"Q. Did Rosa do anything then?

"A. I told her if she wants to raise any trouble. I told her to put the child away, and she had the knife

in her hand right behind her dress, and when I seen that she had the knife, and I seen she was going to stab me, and I takes, to grab her by the hair, and before she stabbed me I took the knife away from her and stabbed her.

"Q. Did she try to stab you that night before you stabbed her?

"A. Why, she had the knife that way (indicating) behind her dress, and her baby she had on her arm.

"Q. So you took the knife away from her, then?

"A. Yes, sir.

"Q. Is that the knife?

"A. I do not recollect if that is the knife, but I killed her with a knife similar to that one, the same length.

Cross examination.

"Q. Did you have any cuts on your hands, Anna?

"A. You saw me the next day in the jail, and I did not have any cuts on my hands."

The case manifests (*Record*, p. 68) that the counsel for the defendant, in his argument before the jury, conceded that the evidence showed the defendant to be guilty of murder in the second degree, but insisted that she should not be found guilty of murder in the first degree. After a careful charge by the Court, directed to explain to the jury the difference between these two degrees of the crime of murder under the New Jersey law, the jury, after due consideration, found her guilty of murder in the first degree.

I.

THE ACTION OF THE CIRCUIT COURT IN REFUSING TO GRANT A WRIT OF *habeas corpus* WAS, IN ALL RESPECTS, CORRECT, AND SHOULD BE AFFIRMED.

The foregoing recital shows—assuming federal questions are involved, for which assumption there is no basis in fact or law—that an effort in this proceeding is made to review in this court the action of the State courts, which can only be done by writ of error.

It is perfectly well settled that the permission accorded by Section 753 of the United States Revised Statutes to federal judges to issue writs of *habeas corpus* in all cases of this kind, does not justify the Circuit Court, or this court, on review of its action, to consider questions as on writ of error or appeal. In other words, the writ of *habeas corpus* thus authorized cannot be made to perform the functions of a writ of error or appeal. The numerous authorities, if any are needed, upon this fundamental question, are collected in *15 Am. and Eng. Ency. Law*, pp. 174, *et seq.*

This proceeding, in other words, is exactly like that condemned by this Court in *Storti vs. Massachusetts*, 183 U. S. 138-141, in the following language:

"It is an attempt to substitute a writ of *habeas corpus* for a writ of error, and to review the proceedings in a criminal case in a State court by such collateral attack rather than by direct proceedings in error—something which this Court has repeatedly said ought seldom to be done."

See also *In Re Wood*, 140 U. S. 278; *In Re Tyler*, 149 *Id.* 164.

In *Anderson vs. Treat*, 172 U. S. 24, this Court reaffirmed the principle that a writ of *habeas corpus* cannot be made use of as a writ of error.

Following this principle this Court held, *In Re Echart*, 166 U. S. 481, that the prisoner was not entitled to a discharge on *habeas corpus* because the degree of the crime when divided into degrees, with punishment varying according to the degree, was not specified in the indictment (this is one of the points, as we have seen, relied upon by the petitioner in the case at bar); that the indictment was found on improper evidence—*Harkrader vs. Wodley*, 172 U. S. 148; the arbitrary exclusion from the panel of persons of the race of the accused—*Andrews vs. Schwarts*, 156 U. S. 272; the refusal of the appellate tribunal of the State to

grant the accused a writ of error—*Bergemann vs. Backer*, 157 U. S. 655.

See also *In Re Jugiro*, 140 U. S. 291-297.

It is therefore respectfully contended that there is nothing in this case to exclude it from the ordinary rule that a writ of *habeas corpus* will not lie to review merely an alleged error in the conduct of a trial in the State court.

II.

THE RECORD OF THE STATE COURT DISCLOSES NO ERROR REVIEWABLE IN THIS COURT.

As we have already seen, the supposed unconstitutional feature of this trial is the fact that the Court, acting upon the concession of the learned counsel for the defendant, that the evidence made the case either one of murder in the first or second degree, directed the jurors' attention solely to the legal difference between these two degrees of crime. This action of the trial Judge was the subject of severe criticism in the Court of Errors and Appeals, and was directly sustained by that court upon the ground that the circumstances conclusively established the crime of murder; and in regard to the comments and suggestions made by the trial Judge concerning the evidence, the opinion of Chief Justice Beasley, in *Smith vs. State*, 12 Vr. 374, was quoted with approval:

"That a judge has a right to give his own views to the jury with respect to the value of the testimony, or upon the merits of the case, is, and always has been, the law of this State."

The fact is, the petitioner is simply seeking to review the conduct of the Judge in the trial of this case without alleging or showing that anything more than the legal correctness or incorrectness of the conduct of the trial is involved; without showing that a single exception, either upon the ground that

the rights guaranteed to the petitioner by the Fourteenth Amendment and the treaty with Italy, or any other federal question, were involved; indeed, without a single exception or assignment of error made during the progress of the trial, and that, too, after the whole proceeding has been most rigorously reviewed and affirmed by the court of last resort in the State of New Jersey.

Indeed, the bare fact that the record fails to disclose, in the proceedings at the trial or in the Court of Errors and Appeals, a single suggestion that the petitioner was deprived of her rights under the Constitution, treaties and laws of the United States, or that the same were in any way involved, is enough to defeat this application, it being perfectly well settled that, in order to permit this Court to review cases of this character, the alleged deprivation of the rights secured by the Constitution or laws of the United States must have been set up in the State court. *Clark vs. Pennsylvania*, 128 U. S. 397; *Caldwell vs. Texas*, 137 U. S. 692.

In *McNulty vs. California*, 149 U. S. 645, this Court, in declining to review a conviction of murder had in the State of California, said:

“When the record, in a case brought by writ of error from a State court fails to show that a right, privilege or immunity claimed under the Constitution, or a treaty or statute of the United States, was set up or claimed, and was denied in the State court, this court is without jurisdiction to review the judgment of the State court in that respect.”

Acting upon this principle, this Court, in *Clifford vs. Heller*, 172 U. S. 641, dismissed an appeal from an order denying a writ of *habeas corpus*.

There is no dispute in this case that the petitioner was amenable to the jurisdiction of the Bergen Court of Oyer and Terminer; that she was legally indicted; that she pleaded

not guilty; had counsel assigned to her; that she was tried and convicted under a statute of the State in no way repugnant to the Constitution or laws of the United States, and this conviction was duly affirmed by the Court of Errors and Appeals of New Jersey. Nothing is better settled than that under such circumstances the federal courts have no authority to interfere, by means of a writ of *habeas corpus*, with the execution of the sentence by the State court. This proposition was distinctly held by this Court in the case of *Bergemann vs. Backer*, 157 U. S. 655.

None of the matters complained of in the conduct of this trial is such as this Court can review, or in any way involve the Constitution of the United States. They are simply matters governing the procedure of trials and entirely within the province and discretion of the State tribunals. As was said by Mr. CHIEF JUSTICE FULLER, in delivering the opinion of this court in the case of *Lambert vs. Barrett*, 157 U. S. 697-699, "With the disposition of State questions by the appropriate State authorities, it is not the province of this Court to interfere."

Indeed, almost every question here involved has been directly passed upon by this court in previous cases. See *Kohl vs. Lehlbach*, 160 U. S. 193; *In Re Jugiro*, 140 U. S. 291; *Lambert vs. Barrett*, 159 U. S. 660; *Caldwell vs. Texas*, 137 Id. 692; *Hallinger vs. Davis*, 146 U. S. 314.

It is respectfully, but confidently, urged that the order of the Circuit Court Judge denying the writ of *habeas corpus* should be affirmed—

(a) Because the writ of *habeas corpus* is not the proper method to review the alleged errors of the State court;

(b) Because no federal question appears to have been raised in the State court, and

(c) Because the alleged errors complained of in no way involve the Constitution or laws of the United States, but

II

are peculiar matters of State procedure and concern, upon which the judgment of the State court is final.

ROBERT H. McCARTER,

Attorney-General of New Jersey.

Dated February 19th, 1906.



Supreme Court of the United States.

No. 404.—OCTOBER TERM, 1905.

Anna Valentina, Appellant, <small>vs.</small> James W. Mercer, Sheriff of Bergen County, New Jersey.	}	Appeal from the Circuit Court of the United States for the Dis- trict of New Jersey.
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[March 12, 1906.]

The appellant has appealed from an order of the United States Circuit Court for the District of New Jersey, refusing her application for a writ of *habeas corpus*.

In her application for the writ, appellant stated that she had been indicted in the Bergen County Court of Oyer and Terminer, in the State of New Jersey, in April, 1904, for the murder of one Rosa Salza, and that she had been convicted on the trial of such indictment by a jury, and sentenced to be hanged on the 19th day of May, 1904. She averred that she had been convicted without authority of law, and that her conviction was null and void, because the question of her guilt or innocence of murder was not entertained by the court or submitted to the jury, as the law of New Jersey expressly requires in all cases where parties are indicted for murder, but, on the contrary, she averred that evidence was taken in said court in said proceedings on her trial merely to determine the degree of her guilt; that her counsel, assigned by the court to represent her in said proceedings, had so stated in a petition in her behalf made to the Court of Pardons of the State of New Jersey. She further said that it was stated by her counsel, in that same petition, that she had pleaded guilty when she was arraigned, but that, under the direction of the court, a plea of not guilty was entered so that evidence might be taken for the purpose of determining the degree of guilt. This averment she denied. The petitioner claimed that the proceedings were wholly unwarranted by the law of New Jersey; and that the court and her counsel proceeded under the impression that section 68 of the act for the punishment of crimes, approved March 27, 1874, which provided that "if a person indicted for murder should be convicted by confession in open court, the court should proceed by examining witnesses to determine the degree of the crime," was then in existence, whereas she said the act had been repealed in 1893, and the present law passed, which provides, "if upon arraignment such plea of guilty shall be offered, it shall be disregarded and a plea of not guilty entered, and a jury empanelled shall try the case in manner aforesaid." The petitioner urged in her petition that by the proceedings adopted upon her trial she was deprived of all benefit of the

presumption of innocence and of reasonable doubt to which she was entitled by law, and that the questions of self-defense and manslaughter, fairly raised by her testimony, were excluded from the consideration of the jury, and the question submitted to them was limited by the court simply as to whether she was guilty of murder in the first degree or not, and the benefit of reasonable doubt was confined to that point.

A writ of error was sued out by the petitioner and her case was brought before the Court of Errors and Appeals, the highest court of the State of New Jersey, for the purpose of review, and, after a hearing, that court refused a new trial. The case is reported in 71 N. J. Law, 552.

It appears from the record herein that upon the trial proof was given that the petitioner stabbed the deceased with a knife a great many times in the neck and breast, killing her instantly. Counsel who had been assigned to defend the petitioner called her as a witness, and she admitted that she stabbed the deceased and killed her. She said that the deceased had a child in her arms at the time and that the petitioner said to her that she did not want to raise any trouble, and told her to put the child away, but that the deceased had the knife in her hand, right behind her dress, and that when petitioner saw that she had the knife and that the deceased was going to stab her, petitioner took the knife and grabbed the deceased by the hair, and before deceased stabbed her she took the knife away from her and stabbed the deceased.

Upon opening for the defense her counsel said as follows:

"This defendant, when arraigned in open court, made confession of the commission of this crime, and you, gentlemen of the jury, from the evidence that has been produced on the part of the State, and that which shall be offered on the part of the defense, will simply have to determine what the degree of guilt shall be; your verdict will be either that she is guilty of the taking of the life of this woman, Mrs. Salza, with malice aforethought, premeditated, which would mean a verdict of murder in the first degree, or your verdict will be murder in the second degree; so that I find myself in a very peculiar position. It is one of those cases around which—the circumstances being such—that we stand, as it were, with only the defendant to testify. After you have heard her testimony, and possibly one or two witnesses in connection therewith, the case will then be given to you for you to determine whether this woman shall forfeit her life for the act which she committed on March 10th, last, or whether she shall suffer the penalty which the law will inflict by reason of a verdict of murder in the second degree."

After that the evidence was given on the part of the defense, and the defendant was called as a witness, and admitted the killing.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

In this case, as in that of *Felts v. Murphy*, decided this day, the question arises on an appeal from an order of the Circuit Court of the United

States for the District of New Jersey, refusing appellant's petition for a writ of *habeas corpus*. Our power to interfere in cases of this nature is limited entirely to the question of jurisdiction. If the State court had jurisdiction to try the case, and had jurisdiction over the person of the accused, and never lost such jurisdiction, the Federal Circuit Court was right in denying the application of petitioner for a writ, and its order must be affirmed. A writ of this nature cannot perform the function of a writ of error. We again cite the authorities referred to in the *Fells case*: *Ex parte Bigelow*, (113 U. S. 328;) *In re Lennon*, (166 U. S. 548, 552;) *In re Eckart*, (166 U. S. 481.)

The contention of the counsel for the petitioner is that the proceedings upon the trial, which resulted in appellant's sentence to death, did not amount to a trial at common law, or a proceeding authorized by any statute. That it was a mere inquiry to determine the degree of murder of which defendant was guilty, and hence she has never had a trial by due process of law, and the action of the State court was without jurisdiction. A perusal of the charge of the court to the jury shows that the whole case was presented to the jury upon the evidence that was produced in court. Upon all the evidence given the court stated to the jury that there was no evidence to show that the defendant killed the deceased in her necessary self-defense, and the court instructed the jury that it would not be justified in acquitting the defendant on the ground of self-defense. The court further said that there was no question of manslaughter in the case, and that, not only as a necessary conclusion from the evidence, but upon the admitted facts in the case, the defendant was guilty of the crime of murder, and the only question left for the consideration of the jury was whether it was murder in the first degree or second degree. The court gave an extended explanation as to what constituted murder in the first degree and what constituted murder in the second degree, and stated that the defendant was guilty of murder in the second degree, unless the evidence satisfied the jury beyond a reasonable doubt that the defendant intended to take the life of deceased, and that the intent was carried into execution deliberately, wilfully and with premeditation. Finally, the court submitted to the jury the case and instructed it to consider all the evidence according to the recollection of the jury, and giving to the evidence such weight as it possessed on the mind of the jury. The court stated it was the duty of the jury to determine whether the defendant intended to kill the deceased, and carried out that purpose wilfully, deliberately and with premeditation. If she did, she was guilty of murder in the first degree, and it was the duty of the jury to say so. If not, then on the admitted facts she was guilty of murder in the second degree, and it was the duty of the jury to say that by its verdict. The jury found the petitioner guilty of murder in the first degree.

The charge of the court was the subject of review by the court of last resort of the State of New Jersey, and it was held by that court to be without error. Upon the record in this case there can, in our judgment, be no possible doubt that the petitioner has had a valid trial by a court having jurisdiction of the subject matter and of the person of the accused, and that there was no loss of jurisdiction over either at any time during the trial. What effect was to be given by the court to the admission of counsel (above set forth) was a question of law for the court to decide, and the charge of the court did not oust it of jurisdiction to proceed in the trial of the case. This is to us so plain a proposition that it is unnecessary to enlarge upon it.

Having no power to review on this writ any other question than that of the jurisdiction of the court in the trial and sentence pronounced upon the verdict of guilty, and concluding that there was the necessary jurisdiction, the order of the Circuit Court refusing the writ of *habeas corpus* is

Affirmed.

True copy.

Test :

Clerk Supreme Court, U. S.